

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,) Docket No. 18 CR 781
)
Plaintiff,) Chicago, Illinois
) February 26, 2020
v.) 8:33 a.m.
)
XIANBING GAN,)
)
Defendant.)

VOLUME 7
TRANSCRIPT OF PROCEEDINGS - Trial
BEFORE THE HONORABLE THOMAS M. DURKIN, and a Jury

APPEARANCES:

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Also Present: MR. XIANBING GAN
SPECIAL AGENT STEFANIE MOTON
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Court Interpreters: MS. ROBIN XU MURPHY (Mandarin)
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Government Exhibit

No. 301 1438

No. 303 1438

Instructions Conference

1 (In open court outside the presence of the jury; defendant
2 not present.)

3 THE CLERK: 18 CR 781, United States of America v.
4 Xianbing Gan.

5 THE COURT: All right. Good morning.

6 MR. SEIDEN: Good morning.

7 MR. FRANZBLAU: Good morning.

8 THE COURT: State your names for the record.

9 MR. FRANZBLAU: Sean Franzblau and Rich Rothblatt for
10 the United States.

11 MR. SEIDEN: Glenn -- I'm well trained.

12 THE COURT: All right.

13 MR. SEIDEN: Glenn Seiden, S-E-I-D-E-N, for -- for
14 Mr. Gan.

15 Ms. Stevens is not here yet. I assume that she is
16 having some problems with storing her child this morning. But
17 I'll carry on as far as I can, Judge, since I wasn't involved
18 last night on this.

19 THE COURT: No, I understand everyone's been working
20 very hard on this, and things crept up on us so that --
21 preparing for closing arguments, preparing instructions, and
22 possibly even preparing for defendant to testify.

23 MR. SEIDEN: And I tried to -- I tried to slip a
24 dinner in there somewhere along the line.

25 THE COURT: Mr. Rothblatt, can you shut the door. I

Instructions Conference

1 saw a juror walking by back there.

2 MR. SEIDEN: Yeah, I tried to slip a dinner in there.

3 THE COURT: Okay. Well, all right. I don't think
4 you're going to be prejudiced, Mr. Seiden, because the
5 objections by defense are clearly stated on the instructions I
6 got.

7 I would ask the government to file these instructions
8 on the docket because we're going to work off page numbers
9 here.

10 MR. FRANZBLAU: Okay.

11 THE COURT: And the only way for the appellate court
12 to know what page numbers we're talking about is if these are
13 put on the record.

14 MR. FRANZBLAU: Yes, your Honor.

15 THE COURT: Okay.

16 MR. SEIDEN: Your Honor, I took a quick look at these
17 last night, knowing that I wasn't going to be involved with
18 preparing them. But I do recall not seeing an instruction for
19 mere buyer or seller to a conspiracy. Yes, there's an
20 instruction that the person is not involved in a conspiracy if
21 they're a mere buyer or seller.

22 And I did not see an instruction regarding a
23 co-conspirator not being a -- co-conspirator not being a
24 government agent.

25 THE COURT: That is in there. It is.

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1 MR. SEIDEN: Okay. I don't remember seeing it, so
2 that's --

3 THE COURT: Yeah. There's a discussion of that.
4 There's a proposal for it, the government objects, and we'll
5 deal with it.

6 I didn't -- there's no buyer-seller instruction on
7 this. If you're going to propose one, you know, so be it and
8 we'll discuss it.

9 MR. SEIDEN: Well, I --

10 THE COURT: But --

11 MR. SEIDEN: -- I don't -- she's not here. I don't
12 have the ability to do that now. But I'm going to do it
13 orally. We would ask that a buyer-seller instruction from a
14 conspiracy be submitted.

15 And the reason I'm asking for that, Judge, is that we
16 are going to be alleging -- or we have -- we perceive, not
17 alleging -- we perceive the evidence shows that Mr. Gan at best
18 was buying or selling a service to the conspiracy. And as a
19 result of that, I would like an instruction to indicate that
20 his -- not only his mere presence but a mere purchase or seller
21 to a conspiracy does not make him a co-conspirator.

22 I think your Honor -- I think your Honor understands
23 the argument.

24 THE COURT: All right. It's Pattern
25 Instruction 5.10(A).

Instructions Conference

1 MR. SEIDEN: Thank you, Judge.

2 THE COURT: We'll deal with it before we finish our
3 instruction conference. But so the record is clear, that's
4 the -- that is the instruction I think you're proposing, and --

5 MR. SEIDEN: Also, your Honor, I don't know if -- I
6 don't know because I did not -- Mrs. Stevens is -- she's quite
7 brilliant when it comes to instructions, so usually I cede the
8 entire responsibility to her in my cases. But I know that
9 there -- we had intended to submit two instructions with regard
10 to entrapment as well.

11 THE COURT: You did.

12 MR. SEIDEN: Okay. Thank you.

13 THE COURT: They're in --

14 MR. SEIDEN: I didn't see them, so I don't know.

15 THE COURT: Yeah. No, they're in there.

16 All right. We're going to work off of the page
17 numbers so that the appellate court, if there is a conviction,
18 has an accurate record of how this instruction proceeded.

19 MR. SEIDEN: I'm going to move this so I don't hit my
20 head.

21 THE COURT: All right. So page 1 -- we'll refer to
22 these by page numbers. But page 1 is agreed and will be given.

23 MR. SEIDEN: Okay.

24 THE COURT: Page 2 --

25 MR. SEIDEN: Could you -- since mine are not

Instructions Conference

1 numbered --

2 THE COURT: Let's go off the record.

3 (Off-the-record discussion.)

4 THE COURT: All right. Back on the record.

5 Page 1, agreed, will be given.

6 Page 2, agreed, will be given.

7 Page 3, agreed, will be given.

8 Page 4, agreed, will be given.

9 Page 5, agreed, will be given.

10 Page 6, agreed, will be given.

11 Page 7, agreed, will be given.

12 7 will be modified to add the words "including the
13 defendant" at the top if he testifies. There's a modification
14 of the patterns for that. So we'll have to reserve on that one
15 to see if, in fact, he testifies.

16 All right. Page 8 is agreed, will be given.

17 Page 9 is agreed, will be given.

18 Page 10 will be given if he doesn't testify -- if he,
19 the defendant, doesn't testify. So we'll reserve on that.

20 Page 11 is agreed, will be given.

21 Page 12 is opposed. The argument by defense is that
22 Anthony Valdivia is someone who received or expects to receive
23 benefits in return for his testimony and cooperation with the
24 government. I don't believe the evidence supports that. He
25 was immunized. He has no deal.

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1 You can argue certainly, Mr. Seiden, under the general
2 credibility instruction that he has a bias and there's a reason
3 for him to want to be cooperative. But, nonetheless, he would
4 have exercised his Fifth Amendment privilege had he been called
5 without immunity.

6 So the --

7 MR. SEIDEN: Well --

8 THE COURT: -- proposed instruction -- go ahead.

9 MR. SEIDEN: With regard -- the one I'm looking at, it
10 says -- the last paragraph says, "You may" -- on 12 -- says,
11 "You may give Wei Li and Valdivia testimony whatever weight."
12 I still believe that that paragraph applies, irrespective of
13 the fact that he -- he's not received direct benefit.

14 THE COURT: I don't understand your argument.

15 MR. SEIDEN: Well, he -- his weight -- the weight of
16 his testimony should be given with great care and caution. He
17 hasn't received a benefit, but he is under -- under a
18 significant impairment.

19 THE COURT: No. The general credibility -- the
20 general credibility instruction would cover him. You can argue
21 he's got bias. You can argue a variety of things.

22 But the -- the caution and great care instruction is
23 specifically given when someone has received a benefit in
24 exchange for testifying at the trial, their testimony. And
25 that's the way I read the pattern instruction and the law

Instructions Conference

1 supporting it.

2 So 12 is going to be given over defense objection as
3 proposed by the government. And defense has full opportunity
4 to argue that Mr. Valdivia has a bias, and you can use the
5 general instruction to argue that.

6 Page 13 is agreed and will be given.

7 Page 14 is agreed and will be given.

8 Page 15 is agreed and will be given.

9 Page 16 is agreed and will be given.

10 Page 17. Defense is opposed to it. Is this a pattern
11 instruction?

12 MR. ROTHBLATT: No, Judge. But it's supported by the
13 case law we cited in our original submission.

14 (Ms. Stevens enters the courtroom.)

15 MR. SEIDEN: While you're looking, Mrs. Stevens has
16 just arrived. She's putting her coat away.

17 THE COURT: All right. Let's go off the record for a
18 minute.

19 (Off-the-record discussion.)

20 THE COURT: Back on the record.

21 The only contested instruction that -- Ms. Stevens,
22 that we talked about was whether Valdivia ought to be -- his
23 testimony ought to be viewed with caution and great care, and I
24 stated on the record why I believe -- he had no deal and that
25 the regular credibility instruction is sufficient to argue he

Instructions Conference

1 has some form of bias.

2 But the caution and great care instruction is reserved
3 for those who have a deal where they are going to get benefit
4 from the government for their testimony, at least in writing or
5 an oral agreement, neither of which exists for him.

6 All right. We're on page 17. This is they "should
7 not speculate why any other person whose name you may hear
8 during the trial is not currently on trial before you." The
9 government provided case law allowing such an instruction, and
10 I believe it's an appropriate cautionary instruction here.

11 Frankly, it's a defense-friendly instruction. If this
12 were not given and there was any argument about where is
13 Mr. Pan, I would instruct the jury Mr. Pan got indicted -- he
14 was indicted. Is that correct?

15 MR. ROTHBLATT: Yes, Judge.

16 MR. FRANZBLAU: Yes, Judge.

17 THE COURT: And he's a fugitive, or he hasn't been
18 brought to justice. That doesn't help the defense, I don't
19 think. If you wanted it, you could put it in, but I don't
20 think that helps the defense. And --

21 MS. STEVENS: I think it's already in evidence, your
22 Honor.

23 THE COURT: Is it in evidence?

24 MR. FRANZBLAU: No, not the fact that he was indicted.
25 You allowed me to ask --

Instructions Conference

1 (Unintelligible crosstalk.)

2 THE COURT: One at a time. One at a time.

3 MS. STEVENS: It is in evidence.

4 MR. SEIDEN: It is in evidence.

5 THE COURT: That he was indicted?

6 MR. SEIDEN: Yes.

7 MS. STEVENS: Yes.

8 THE COURT: Who put it in?

9 MR. SEIDEN: I think it was either Moton or one of the
10 agents. Somebody put it in. I heard it.

11 MS. STEVENS: Yeah, I did too. And I don't -- I don't
12 remember who it came in with, but it is in evidence.

13 THE COURT: Well, regardless, I'm going to -- whether
14 it's in or not -- and you ought to see if you can agree on that
15 because if it's going to be argued, I don't want to have an
16 objection and I have to sort that out. I don't recall it
17 coming in, but it's possible your memory on that is better than
18 mine.

19 I'm going to give 17. Are you still objecting to
20 this?

21 MR. SEIDEN: Up to you.

22 MS. STEVENS: No, it's fine. We can withdraw our
23 objection.

24 THE COURT: All right. 17 is given without objection.
25 18 is given over objection.

Instructions Conference

1 I think "on or about" is the way it was charged in the
2 indictment, and that's always a -- when the indictment charges
3 something happened "on or about," the jury needs to know that
4 exact dates are not necessary to be proven. So it's given over
5 objection.

6 19 is given -- is agreed and will be given.

7 20 is agreed and will be given.

8 21 is agreed and will be given.

9 MR. SEIDEN: Excuse me one second on 21.

10 Okay. Thank you.

11 THE COURT: All right. 22 is agreed and will be
12 given. Page 23 is part of the instruction on page 22.

13 Page 24 is agreed and will be given.

14 Page 25 is agreed and will be given.

15 26 is a proposed instruction by defendants that --
16 or -- that a government agent cannot be a co-conspirator, which
17 is a correct statement of the law. Government agrees with
18 that, right?

19 MR. FRANZBLAU: Correct.

20 THE COURT: All right. And you instead propose an
21 alternative instruction.

22 My suggestion is we combine the two, put both the
23 first line, "government agent cannot be a co-conspirator," and
24 then follow it with the two separate paragraphs the government
25 proposes, all of which I think is an appropriate and correct

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1 statement of the law.

2 Any opposition by the government?

3 MR. FRANZBLAU: No, your Honor.

4 THE COURT: By defense?

5 MR. SEIDEN: I'm reading it.

6 THE COURT: Okay.

7 MR. SEIDEN: Yes. The -- it should be "May 3rd."

8 THE COURT: Oh. You want to make it specific to
9 May 3rd?

10 MR. SEIDEN: Yes.

11 THE COURT: Any objection to that by the government?

12 MR. FRANZBLAU: No.

13 THE COURT: All right. So it will be "May 3rd, 2018."
14 And we will combine the first sentence with the two paragraphs
15 proposed by the government.

16 As modified, any objection by the government?

17 MR. FRANZBLAU: No, your Honor.

18 THE COURT: By defense?

19 MS. STEVENS: No, your Honor.

20 THE COURT: All right. That's how it will be given.

21 Page 27 is agreed and will be given.

22 Page 28 is agreed and will be given.

23 Page 29 is objected to by defense.

24 This is the definition that is provided in the -- in
25 the actual statute, 1956 -- I'm sorry. Yeah. 1956(c) uses --

Instructions Conference

1 this is word for word what -- the definition in the statute.

2 MS. STEVENS: It is, your Honor. But the indictment
3 itself charges specific -- more specific knowledge. And
4 that -- especially as regards the conspiracy.

5 THE COURT: All right. Which count are we talking
6 about? Which section of Count I?

7 MS. STEVENS: Just a second.

8 So in the conspiracy count, that the transaction
9 involved -- in -- page 2.

10 THE COURT: What paragraph?

11 MS. STEVENS: In paragraph a., that the transaction
12 involved the buying, selling, et cetera, of the controlled
13 substance, knowing that it was designed to conceal the proceeds
14 of the specified unlawful activity. And then it only gets to
15 the "some form of unlawful activity."

16 But we are talking about a specific -- the specified
17 unlawful activity, the knowledge as to the specified unlawful
18 activity.

19 THE COURT: What's the response of the government?

20 MR. FRANZBLAU: Judge, there's no support in the case
21 law to say that if we are specific in the indictment -- which
22 we were for purposes of giving him notice -- that that raises
23 our burden of proof at trial. That would be like saying if I
24 charge the defendant with a drug conspiracy and I specify
25 heroin, suddenly now I have to prove it was heroin instead of

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1 any controlled substance.

2 The law is the law. The government can't change the
3 law by the way it words the indictment.

4 MS. STEVENS: Your Honor, I believe that the example
5 given by the government is substantively different from the
6 example that we're arguing. We're not talking about specifying
7 a specific type of drug. We're saying that the government in
8 this instruction is saying he only has to know it's bad money
9 essentially, doesn't have to know that it's from drugs, which
10 has been -- a great deal of the evidence entered by the
11 government in this case is that there's a massive drug
12 conspiracy.

13 THE COURT: Well, this portion of the conspiracy,
14 which only spes -- sets forth several ways the conspiracy
15 occurred -- of which the government doesn't have to prove up
16 both of them or all of them, just has to prove one of the two.
17 But this Section a. says --

18 Could someone please shut the back door. We have
19 jurors walking by. Thanks.

20 (Continuing) -- charges that the defendant, with
21 others, conspired, in essence, to conduct financial
22 transactions affecting interstate commerce; transaction
23 involved proceeds of specified unlawful activity; sets forth
24 code sections relating to controlled substances; and that while
25 knowing the transaction was designed to conceal and disguise.

Instructions Conference

1 Excuse me. What?

2 (Off-the-record discussion.)

3 THE COURT: While conducting financial transaction
4 knew the property involved in the transaction represented
5 proceeds of some form of unlawful activity.

6 I think this is a correct statement of the law. And
7 the next two instructions deal with whether or not these are --
8 what is a controlled substance, what is a felony. But this is
9 a correct statement of the law. I don't think the indictment
10 changes this definition.

11 MR. SEIDEN: Your Honor?

12 THE COURT: Yeah.

13 MR. SEIDEN: The fact that it's a correct statement of
14 the law I perceive -- and I mean no disrespect -- I believe is
15 irrelevant. An individual was charged with an indictment. An
16 indictment -- purpose of an indictment or a charge is to inform
17 an individual what he is charged with and what he must defend
18 and, of course, protect him against being charged a second time
19 for the same offense.

20 This instruction generalizes the indictment. So now
21 we have a -- a defendant who is charged with a specific
22 offense, yet this instruction tells him, "Never mind the
23 specific offense. If he did anything that you think was
24 improper or wrong, you may find him guilty."

25 So when I say -- and I said I don't mean to be

Instructions Conference

1 disrespectful when I say that the fact that it's a statement --
2 a correct fact -- statement of the law makes it -- is
3 irrelevant. It's irrelevant to this case.

4 I didn't charge this case; the government did. The
5 government could have left out the reference to drugs. They
6 could have -- they could have made some other specific finding
7 or suggestion. But the indictment is clear. It has nothing to
8 do with any other offense.

9 And double jeopardy -- now what happens if they indict
10 him for moving --

11 THE COURT: Well, I understand your argument. So are
12 you objecting to the last sentence?

13 (Counsel conferring.)

14 MR. SEIDEN: The problem -- go ahead.

15 MS. STEVENS: Both sentences essentially say the same
16 thing, that the property --

17 MR. FRANZBLAU: I'm sorry.

18 (Counsel conferring.)

19 MR. SEIDEN: I think you get the --

20 THE COURT: I don't. Hang on. Once -- we'll stay off
21 the record.

22 (Off-the-record discussion.)

23 THE COURT: Then let's go on the record. Go ahead.

24 MS. STEVENS: Just to be clear there, it's not just
25 one knowledge clause. Every single clause in there has a

Instructions Conference

1 "knowingly" or "knowing" language in it. He has to know what
2 he's doing. And part and parcel of that is knowing that the
3 transaction was designed to conceal, dot dot dot, the proceeds
4 of the specified unlawful activity, which is drugs.

5 THE COURT: All right. Well, the first --
6 Mr. Franzblau is right. There's two knowledge sections in
7 subsection a. of the conspiracy count: knowledge that the --
8 that -- knowingly conducting a financial transaction involving
9 the -- which transaction involved the proceeds of specified
10 unlawful activity, namely, drug felonies; and, two, knowledge
11 that the transaction was designed in part to conceal the
12 nature, location, source, et cetera, of the proceeds of the
13 specified unlawful activity.

14 MS. STEVENS: Right.

15 MR. SEIDEN: Right. The antecedent is drugs.

16 THE COURT: Well, the first one talking about drugs --
17 well, I'm -- off the record.

18 (Off-the-record discussion.)

19 THE COURT: Back on the record.

20 So 29 is reserved.

21 30 is agreed and will be given.

22 31 is agreed and will be given.

23 32 I don't -- 32 and 33 are the -- two-page
24 instruction.

25 I believe this was agreed to by defense in the opening

Instructions Conference

1 instructions when we added the words "as it applies to Counts I
2 through IV" at the beginning of this. That was an objection
3 you made. We modified it, and there was no objection
4 preliminarily.

5 Are you still objecting to this?

6 MS. STEVENS: Only in the sense that we believe it
7 needs to -- we need to also include all the Illinois law
8 instructions which are later.

9 THE COURT: Yeah. That -- this -- we're talking about
10 Counts I through IV here. We put in the language --

11 MS. STEVENS: Yes. That's fine. You're absolutely
12 correct. I think we did withdraw it.

13 THE COURT: All right. So pages 32 and 33 are agreed.

14 MR. FRANZBLAU: Judge, I'm sorry. Can we go back to
15 31? I just wanted to flag this for the defense.

16 THE COURT: Yeah.

17 MR. FRANZBLAU: They had -- Brooke had flagged --

18 MS. STEVENS: Oh, yeah. That's fine.

19 MR. FRANZBLAU: That's agreed?

20 MS. STEVENS: That's fine, yeah.

21 MR. FRANZBLAU: Never mind. We're good.

22 THE COURT: All right. 31 is agreed, and it will be
23 given.

24 The instruction on pages 32 and 33 are agreed and will
25 be given.

Instructions Conference

1 The instruction on page 34 is agreed and will be
2 given.

3 Page 35 is agreed and will be given.

4 36 is agreed and will be given.

5 37 is going to be given over objection. I believe
6 it's an accurate statement of the -- of the statute.

7 38. This is where Gan has an objection, needing
8 clarification of the Illinois statutory definitions. I'm going
9 to give that. I believe that -- you can't charge someone
10 saying that they violated the licensing requirement in Illinois
11 without defining what that licensing requirement is.

12 So on page 38, the defense proposal will be given,
13 along with the government's statement, which is an accurate
14 statement, at the beginning. But the definitions that are
15 proposed by Gan on the rest of page 38 are going to be given.

16 Is that over government objection?

17 MR. FRANZBLAU: No.

18 THE COURT: All right. So that's without objection,
19 and we'll make those modifications.

20 39 and 40 and into page 41 are all entrapment
21 instructions. I'm going to give them. I believe there is a
22 gap between the time the conspiracy where Gan was allegedly
23 involved and the time that Lim began to cooperate. And her
24 initiating the contact with Gan allows at least some
25 argument -- and it's a slight burden -- to at least allow the

Instructions Conference

1 instruction to be given. I'm not going to substitute myself as
2 a fact-finder. I'm going to give the entrapment instruction.

3 The jury can decide if there's predisposition. The
4 government has plenty of evidence to argue that he was
5 predisposed. They have plenty of evidence to argue that the
6 inducement was not extraordinary. But they're entitled to
7 argue it and let the jury decide. So the entrapment
8 instructions are going to be given.

9 And I believe that is it other than the one we
10 reserved on.

11 MR. SEIDEN: And I think I had talked about buy-sell.

12 THE COURT: All right. Talk to the government about
13 that while I hear the motion call --

14 MR. SEIDEN: Very well.

15 THE COURT: -- and see if you reach agreement on it.
16 I'm not sure you will. But we'll deal with the buyer-seller
17 instruction, and we'll deal with the one I reserved on after
18 our break.

19 And then, Mr. Seiden, find out if your client is going
20 to testify.

21 MR. SEIDEN: Yeah.

22 THE COURT: Okay.

23 MR. SEIDEN: Well, we need him.

24 THE COURT: I know you do. I just want to give you
25 your list of things to do in the next 15 minutes.

Instructions Conference

1 MR. SEIDEN: Now you're getting a taste of what I go
2 through, Judge.

3 THE COURT: All right. Thank you.

4 (The Court attends to other matters.)

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Instructions Conference

1 THE COURT: Well, let's go on the record now.

2 The defendant has proposed a buyer-seller instruction,
3 which is Instruction 5.10(A) in the Seventh Circuit pattern
4 instructions. Mr. Seiden, succinctly put your reasons on the
5 record for why you want this instruction.

6 MR. SEIDEN: Well, we perceive that it could be argued
7 that the services he provided to the conspiracy is that of a
8 vendor as opposed to a participant.

9 THE COURT: All right. Government's response?

10 MR. FRANZBLAU: Judge, the buyer-seller instruction
11 does not apply outside of the context of drugs distribution,
12 specifically the on-the-spot exchange or sale of drugs between
13 a supplier and a user. It's designed entirely as your Honor
14 stated, to protect a mere drug user from incurring
15 conspiratorial liability simply by purchasing drugs from
16 someone and consuming them.

17 THE COURT: All right. The committee comments for
18 this instruction note that "A routine buyer-seller
19 relationship, without more, does not equate to [a] conspiracy."
20 And this is given routinely in a situation where a -- typically
21 a user, someone who is not part of the overall conspiracy, just
22 buys drugs, doesn't through that action become a member of the
23 broader conspiracy that involves importation or larger
24 distributions of drugs.

25 In this case, it's not a drug conspiracy charge.

Instructions Conference

1 Certainly it -- it -- there's talk of drugs. The proceeds are
2 drugs. They have to be illegal proceeds of some kind, and in
3 this case it is illegal proceeds relating to drug transactions.

4 But the conspiracy charged is not a conspiracy under
5 21 U.S.C. 846, a drug conspiracy. It's 18 U.S.C. 1956. It's a
6 money laundering conspiracy.

7 So -- yeah, 1956(h), in fact.

8 So the instruction is refused.

9 Okay. We have one other one left. Let me give some
10 thought to it. And then we're waiting -- off the record.

11 (Off-the-record discussion.)

12 THE COURT: You want this on the record?

13 MR. FRANZBLAU: Yeah. I'm sorry.

14 Your Honor, as to the one instruction that we've
15 reserved and that you're going to consider further on page 29,
16 the government proposes adding a clause at the beginning "As it
17 applies to Counts I through IV," just as we have on page 28,
18 because for Count V, there's no requirement that we show that
19 the underlying money is derived from unlawful proceeds.

20 THE COURT: All right. Any objection to that
21 modification?

22 MS. STEVENS: I mean, our objection to the instruction
23 remains the same, but I don't care about the modification.

24 THE COURT: All right. We'll make the modification if
25 this instruction's given.

1 MR. FRANZBLAU: Thank you, your Honor.

2 THE COURT: All right. Thank you.

3 (Pause in proceedings.)

4 COURT SECURITY OFFICER: All rise.

5 (Jury in at 9:36 a.m.; defendant present.)

6 THE COURT: Please be seated, ladies and gentlemen.

7 All right.

8 MR. SEIDEN: Thank you.

9 THE COURT: Ladies and gentlemen, thank you for --

10 COURT REPORTER: The mics aren't working.

11 THE CLERK: What's going on here?

12 (Off-the-record discussion.)

13 THE COURT: Well, good morning, ladies and gentlemen.

14 Sorry for the delay. I know you got an instruction on witness
15 credibility. And if I were a witness, I wouldn't be very
16 credible because I've told you every day when we're starting,
17 and I've been wrong each day.

18 But we were able to get some work done in your absence
19 relating to the case. And I expect that you'll be hearing
20 closing arguments this morning, sometime this morning.

21 The schedule is after the closing argument by the
22 government, our court security officer is going to take you
23 down to the second floor for lunch. We want to keep you
24 together. So you're -- you don't have to eat the cafeteria
25 food if you brought your own, but he's going to buy you lunch.

1 Actually, the government will. And in some ways you're paying
2 for that too because we're all taxpayers.

3 After that, you'll hear defense closing argument and
4 then the government rebuttal, and then the case will be in your
5 hands.

6 But right now we need to finish this witness. So,
7 Mr. Seiden, you may begin cross-examination.

8 MR. SEIDEN: If the Court please. Thank you very
9 much.

10 MATTHEW DAOUD, GOVERNMENT WITNESS, PREVIOUSLY SWORN

11 CROSS-EXAMINATION

12 BY MR. SEIDEN:

13 Q. You are Matthew Daoud?

14 A. Yes, sir.

15 Q. You are the same Matthew Daoud that had testified yesterday
16 in this matter?

17 A. Yes.

18 Q. And you understand, sir, you're still under oath?

19 A. Yes.

20 Q. Okay. I had a little problem hearing yesterday. You have
21 a very soft voice. I'm sure you're very large in life, but you
22 have a little voice. So I'm going to ask you a few questions
23 you may have been asked yesterday. Tolerate me if you would,
24 please.

25 A. Okay.

1 Q. You are associated with HSI?

2 A. Yes, sir.

3 Q. Homeland Security?

4 A. Yes.

5 Q. How long have you been with them?

6 A. Over 13 years.

7 Q. And I take it that your basic MOS is that you deal largely
8 with the electronics, technology?

9 A. Yes. My team -- my team -- within my team and partially
10 for my office, I deal with electronics.

11 Q. Okay. Now, I take it that's not your only responsibility.

12 A. No, sir.

13 Q. You are an armed agent under normal circumstances.

14 A. Yes, sir.

15 Q. Okay. So you -- you also take -- you're also involved in
16 other activities, such as surveillance and interdiction with
17 suspects from time to time. Is that correct?

18 A. Yes.

19 Q. But you are also -- you seem to be the expert in the
20 technology for your office.

21 A. One of many.

22 Q. You can -- you can say yes. You don't have to be modest
23 about that. Okay.

24 Now, you had indicated that you had seized a
25 telephone -- or you received a telephone, I believe you said,

1 from Mr. Gan. Did I misunderstand that?

2 A. No, I didn't receive any phones from them.

3 Q. You did not.

4 A. No.

5 Q. Okay.

6 A. I was given phones by the case agent.

7 Q. Okay. I'm going to ask you, if it's not too difficult for
8 you, either to pull the microphone closer or get -- I know the
9 knees get in the way there, but --

10 THE COURT: Yeah. The mic, you can move it toward
11 you.

12 THE WITNESS: I apologize.

13 BY MR. SEIDEN:

14 Q. You didn't do anything wrong to apologize for yet.

15 So you received a phone from -- purported to be
16 Mr. Gan's phone.

17 A. Yes.

18 Q. Okay. And you were told that phone was as a result of his
19 arrest, I think you said, in November of 2018. Is that right?

20 A. Yes.

21 Q. Okay. And then you applied a software. Cellebrite, I
22 think you said it was.

23 A. Yes.

24 Q. Okay. And you did a Cellebrite report to determine some of
25 the contents of the phone. Is that right?

1 A. Yes.

2 Q. Okay. Now, you also received a phone, I believe, from
3 Ms. Lim at some point.

4 A. Yes.

5 Q. Okay. And you did a Cellebrite on that phone as well.

6 A. Yes.

7 Q. When we looked in Ms. Lim's phone, it had the first name
8 was a guy by the name of Haiping -- I think it said "Haip Pan."

9 Do you remember that?

10 A. I don't. I don't recall.

11 Q. Okay. But then the 161st name was somebody else. It was
12 Mr. Gan's, actually. Do you know why there would be 160 names
13 between the two?

14 A. I don't.

15 Q. Okay. Is that random, or is that by usage, or is it
16 alphabetical? Do you know?

17 A. To answer that question, I'd have to speculate on multiple
18 factors that might have --

19 Q. I don't need you to speculate.

20 A. So, yeah, I don't -- I don't know.

21 Q. Okay. But that is the way the phone worked. Is that
22 right? The Cellebrite.

23 A. I would have to re-review Ms. Lim's Cellebrite report.

24 Q. Okay. Now, you also indicated -- you used the word
25 "encryption." We all hear that word a lot. Can you tell us

1 again, please, what that means.

2 A. Encryption in the simplest terms I can think about is if
3 you take a piece of information and you scramble or disguise it
4 and that a code or a pass phrase can descramble it and make it
5 make sense again.

6 Q. So let me see if I understand that.

7 So I use my iPhone and I text you. And from the
8 time that the text that I send you -- makes a lot of sense --
9 to the time it floats down through the air -- when it's
10 floating through the air, it's encrypted. So if Bob could grab
11 some of that information out of the air, it would just be
12 random nonsensical information?

13 A. Roughly speaking, yeah. There are different levels of
14 encryption. Encryption can happen at different phases of the
15 communication. End to end refers to the act of it being
16 transmitted, like you just said, intercepting it in the middle.
17 Things can be encrypted on the device also.

18 Q. So when it travels through the air and ends up on another
19 phone that is designed to understand how to unscramble or
20 unencrypt, then I can read -- you can read the message I sent
21 you.

22 A. Correct.

23 Q. Okay. And encryption isn't just used for our text
24 messages; it's used for codes. Our -- our national coding and,
25 you know, the CIA and all kinds of government agencies use

1 encrypted information. Is that right?

2 A. I'm not sure specifically what you're referring to, but
3 encryption is widely used.

4 Q. It's widely used. And it's used so that the sender can
5 send information to the receiver and not have an open -- an
6 open airway, so to speak.

7 A. Yes.

8 Q. Okay. And I have an iPhone. Other people have the
9 Samsung and those phones. Those all use encryption when it
10 comes to their text messages. Is that right?

11 A. No.

12 Q. Who doesn't?

13 A. Each -- each operating -- all these phones use different
14 operating systems. That's the software that makes it work as a
15 phone or be able to do things like have applications or
16 text-message or make calls.

17 By default, devices on an Android platform created by
18 Google don't typically have their text messages encrypted. You
19 would have to do -- install a third-party application.

20 Q. But the OS with the Apple is encrypted, is it not?

21 A. It has a form of encryption.

22 Q. Okay. Now, I live in the United States, so it would make
23 sense that I would either have one or the other that we just
24 described, an iPhone or a -- what was the other, a -- what
25 does Samsung use?

1 A. They're based on an Android platform.

2 Q. On an Android. I would either have an Apple or an Android
3 phone most probably here in the States. Is that right?

4 A. I would say that's fair to say, yeah.

5 Q. But if I lived in another country, I might have the service
6 that's provided in that country.

7 A. Again, I'm not sure what you're referring to. But there
8 are --

9 Q. You're right.

10 A. Yeah.

11 Q. So I'll ask you a different question. If I come from
12 China, it's probable I'm using WeChat. Is that right?

13 A. WeChat is an application that can be installed on a phone.
14 It's not an operating system.

15 Q. Right. It's common in -- it's more common in China than it
16 is here. Is that right?

17 A. I think that's fair to say. But it's widely used here.

18 Q. Okay. And WeChat is also encrypted.

19 A. Yes. To my knowledge, yes.

20 Q. All right. And the fact that a message is encrypted
21 doesn't necessarily mean that the message is good or bad or --
22 there's no connotation to the actual message as a result of the
23 encryption. Is that correct?

24 A. I don't think there's an implied connotation.

25 Q. Thank you.

1 All right. You had talked about some messages being
2 marked for deletion. All right. And so without being too
3 technical, a phone has a hard drive. Is that right?

4 A. That's a good description, yes.

5 Q. Okay. And it also has software to teach the hard drive how
6 to work. Is that correct?

7 A. Yes.

8 Q. It's like having a body without a soul. Unless there's
9 something in there that gives it instructions how to work, it's
10 just a piece of metal. Is that right?

11 A. Yes.

12 Q. Okay. So there is a limitation -- is there not? -- to the
13 space on a hard drive.

14 A. Yes.

15 Q. Okay. And -- so I get pictures all the time from my
16 family. And if I just keep downloading those pictures,
17 eventually my hard drive will fill. Is that right?

18 A. Yes.

19 Q. And then my phone will become useless unless I either get a
20 larger hard drive or I delete some of the pictures. Is that
21 correct?

22 A. That's fair to say, yes.

23 Q. And that would be the same with text messages or any
24 information that would have to be stored on the hard drive. Is
25 that right?

1 A. That's not necessarily true.

2 Q. Okay. Some of the information may be stored in what we
3 call the cloud. Is that right?

4 A. Yes, some applications can be stored in the cloud.

5 Q. Can be. Okay. And that would not necessarily be on my
6 hard drive.

7 A. It could be in one or both places.

8 Q. But if I wanted to keep my hard drive fairly clear, it
9 would be imperative that I delete some of the stuff I received,
10 "stuff" being a technical term.

11 A. I guess that's a -- a personal choice of the user. I mean,
12 there's ways to expand your storage. But if you wanted to keep
13 it clear, you would have to delete things.

14 Q. Okay. Now, I'm not talking about expanding the storage;
15 I'm talking about utilizing the storage that I have.

16 Expanding the storage comes with a cost, does it not?

17 A. Yes, cloud storage typically costs.

18 Q. Okay. So the fact that something is deleted from a phone
19 is not necessarily an indication of something bad. Is that
20 right?

21 A. Not necessarily.

22 Q. Okay. It could be nothing more than the user's desire to
23 keep -- to utilize the storage -- to utilize the storage
24 capacity less. I think I said that badly, but I think you may
25 understand what I'm talking about.

1 To maximize the storage capacity.

2 A. Certainly that could be their technique.

3 Q. Okay. Now, now that we've resolved that, let's jump ahead
4 a wee bit.

5 (Counsel conferring.)

6 MR. SEIDEN: Excuse me one second, your Honor.

7 (Counsel conferring.)

8 MS. STEVENS: I've got it.

9 MR. SEIDEN: Do we have it? Yes. Okay. Do we
10 have -- page 1. Thank you.

11 She found it.

12 BY MR. SEIDEN:

13 Q. Do you -- you don't have any of the --

14 THE COURT: Do you want to use the ELM0?

15 MR. SEIDEN: I think so, Judge.

16 THE COURT: All right. And is this an exhibit in
17 evidence?

18 MR. SEIDEN: This exhibit is 304-9, government
19 exhibit, and it is in evidence.

20 THE COURT: All right.

21 BY MR. SEIDEN:

22 Q. This is 304-9. Did you have occasion to see this yesterday
23 when you were testifying?

24 A. Yes, I believe I did see this yesterday.

25 Q. And this purports to be a -- a WhatsApp. WhatsApp is an

1 application like WeChat or iText or one of the other
2 applications we talked about. Is that right?

3 MR. SEIDEN: Okay. Turn this on. I was moving away
4 and caught myself.

5 (Off-the-record discussion.)

6 THE WITNESS: That's the --

7 BY MR. SEIDEN:

8 Q. That's one of those --

9 A. WhatsApp is an instant messaging application.

10 Q. Pretty much like we were just talking about, right?

11 A. Similar.

12 Q. Okay. Is that encoded or encrypted?

13 A. It can be end-to-end encrypted.

14 MR. SEIDEN: Excuse me, folks.

15 BY MR. SEIDEN:

16 Q. And this apparently is a -- it's dated November 18, 2016.
17 Is that correct?

18 A. Yes.

19 Q. And it's on WhatsApp.

20 A. Yes.

21 Q. And does this say who this is from?

22 A. This says -- yes, it does.

23 Q. And it indicates: "Use this from now on."

24 A. Yes.

25 Q. Do you know what the antecedent of "this" is?

1 A. No.

2 Q. I'm going to show you page 2, if I might, of that same
3 document of the -- of the same -- see if I can do this without
4 knocking it over.

5 This is dated -- this is page 2 of the same -- of
6 304-9, government's exhibit. Do you see this document?

7 A. Yes.

8 Q. Dated December 9.

9 A. Yes.

10 Q. What's -- again, it's on WhatsApp.

11 A. Yes.

12 Q. All right. And I notice that there are -- the Pan message
13 is empty.

14 A. Yes.

15 Q. Can you account for why it's empty?

16 A. No. I -- it would -- there's a variety of reasons why that
17 might be empty.

18 Q. Okay. And then Gan says: "[I] got it."

19 A. Yes.

20 Q. And the next time you hear from Gan, empty message.

21 A. Yes.

22 Q. Can you account for why that message is empty?

23 A. No, I can't.

24 Q. Can you determine what was said or communicated in that
25 message?

1 A. No.

2 Q. I'm going to show you page 3, December 12.

3 Do you see that?

4 A. Yes.

5 Q. I'm going to try to make it just a little bigger so
6 everybody can see it better. There we go.

7 And that's also WhatsApp?

8 A. Yes.

9 Q. Okay. That's the same platform that we talked about a
10 minute ago?

11 A. Yes.

12 Q. And you have four -- four communications of some sort from
13 Pan at the very same time.

14 Do you see that?

15 A. Yes.

16 Q. And then the last message is empty. Is that correct?

17 A. Excuse me. There's three at the same time.

18 Q. I said -- did I say four?

19 A. Yeah. I'm sorry.

20 Q. No, glad you corrected me. Listen. This is -- it's what
21 you say that's important, not what I say.

22 So you've got three messages at the very same time,
23 and then there is one that is hours later. Is that correct?

24 A. Yes.

25 Q. There's nothing there from Gan.

1 A. No.

2 Q. And there's no way of determining whether Gan ever received
3 these messages or read these messages. Is that right?

4 A. I don't know that that's necessarily true. There might be
5 a read receipt, but I would have to dive into it.

6 Q. But looking at this document, it doesn't -- it's not there.

7 A. No.

8 Q. Okay. And then we'll take a look at page 4 of the same --
9 of the same exhibit. And that's dated December 13.

10 A. Yes.

11 Q. Again, WhatsApp.

12 A. Yes.

13 Q. Again, we have two communications purported from Pan at the
14 same time.

15 A. Yes.

16 Q. And the first one says: "There's only this Bank of China."

17 Is that correct?

18 A. Yes.

19 Q. Okay. And then it has the empty message from Pan.

20 A. Yes.

21 Q. Not to be overly redundant, there's no -- you don't know
22 why it's an empty message.

23 A. I don't have a reason.

24 Q. Okay. Thank you.

25 I looked at your -- your extraction report. And I see

1 that -- that would be under, by the way, 304.

2 Can you give me the date of the last -- of the last
3 information extracted in that report?

4 A. I don't have that information off the top of my head. I'm
5 sorry.

6 Q. I know you don't. If I might -- I'm going to take mine
7 out.

8 MR. SEIDEN: And if I may step forward, Judge.

9 THE COURT: Go ahead.

10 BY MR. SEIDEN:

11 Q. Okay. I'll give you my copy so we can save a bunch of
12 time.

13 A. Okay.

14 Q. Take a look at -- please tell me, if you can, what the last
15 date of an extraction of that particular phone -- of that
16 report was.

17 A. If you're referring me to the extraction end date, that
18 would --

19 Q. Yes, sir.

20 A. -- that would be November 28th, 2018.

21 Q. Okay. And what's the first date?

22 A. Extraction start date, November 28th, 2018.

23 Q. Okay. I'm going to -- I'm going to step forward --
24 probably should have asked you this when you had everything in
25 hand -- and I'm going to ask you to look at this document

1 again. I'm sorry. I -- actually, it's 304-7, which is I think
2 the last page of that document.

3 I -- I noticed even the extraction report is from
4 November 28, 2018. What's the last date -- I'm going to reach
5 over. What's the last date of the call log on there?

6 A. On -- on this page, the last entry, which is a contacts
7 entry, is April 14th, 2017.

8 Q. Here are the rest -- is the rest of the document. See if
9 there's anything on there that shows any call log past April of
10 2017.

11 And while you're looking, that's Mr. Gan's phone that
12 was seized in November of '18, right?

13 A. Yes.

14 Q. Okay. Continue looking, please.

15 A. On these sheets, I don't see another date.

16 Q. Okay. Now, just to be clear -- thank you. I'm going to
17 take that back from you.

18 Just to be clear, as far as you are aware, when
19 Mr. Gan was arrested, his phone was taken. Is that correct?

20 A. Yes.

21 Q. Okay. And as far as you're aware, he wasn't told in
22 advance that he was being arrested.

23 A. Oh, I don't -- I don't have that information.

24 Q. Okay. You wouldn't think that would have been the case,
25 though. Is that right?

1 A. Yeah. I'd have no idea.

2 Q. Okay. So you get his phone on November -- November of
3 2018. But the last entry on the dock -- in his phone, the last
4 call log in his phone, was April 2017. Is that correct?

5 A. That's the last entry in the pages provided me. The actual
6 extract may have other data.

7 Q. Okay. This is what the government gave you?

8 A. Yeah -- yes.

9 Q. Okay. Now, we're done with this. I'm going to move to a
10 different area, and I'm going to do this a lot quicker. Okay?

11 You were also pressed into service for the purposes
12 of -- of surveillance. Is that correct?

13 A. Yes.

14 Q. And you saw the tapes, and we're -- I'm not going to put
15 you through that again. Okay?

16 But you had occasion to watch -- was that two
17 transfers or three?

18 A. Three.

19 Q. -- three transfers of money from an individual -- from
20 individuals to an undercover agent. Is that correct?

21 A. Twice to an undercover agent, and one was a dead drop.

22 Q. A dead drop. Oh, right. Put it into a car when nobody was
23 there.

24 A. Yes.

25 Q. Okay. Now, one of those was with a guy with a big beard?

1 A. Yes.

2 Q. Turned out to be the son of somebody else?

3 A. Yes.

4 Q. Okay. Now, did you see Mr. Gan in any of those events?

5 A. No, sir.

6 MR. SEIDEN: Would you stand up, please, Mr. Gan.

7 BY MR. SEIDEN:

8 Q. Do you see that man that's standing over there?

9 A. Yes.

10 Q. Do you recognize him from any of your observations?

11 A. On that day or --

12 Q. On that day.

13 A. No.

14 Q. Did you see him on any other day?

15 A. No.

16 MR. SEIDEN: Thank you. Have a seat, please.

17 THE COURT: All right. The record will reflect the
18 person standing was the defendant.

19 BY MR. SEIDEN:

20 Q. On the day that you made those -- that you intercepted
21 those drops, was Mr. Gan present?

22 A. To my knowledge, no.

23 Q. Okay. On any of the intercepts that you had, did you have
24 any information that Mr. Gan had communicated to the people
25 making those drops?

1 A. I had no information at the time, no.

2 Q. Okay. Did you have information at that time that Ms. Lim
3 had communications with the people making those -- I say
4 "drops," but transfers. I don't know what they were. How do
5 you refer to them?

6 A. We call them money pickups.

7 Q. Okay.

8 A. But I understand the terminology "drop." That's fine.

9 Q. Okay. I don't live in that world, so -- okay? So thank
10 you.

11 Did you have any communication from Ms. Lim with
12 respect to those money pickups?

13 A. I -- my team received information that the defendant was
14 seeking to have these pickups conducted in the Chicago area.

15 Q. I certainly appreciate that answer, but it doesn't answer
16 my question.

17 A. Oh, I'm sorry.

18 Q. Ms. Lim. I know Ms. Lim was a defendant. So did you
19 have -- did you experience any communications with Ms. Lim with
20 regard to those pickups?

21 A. I did not personally. But that information I think was
22 provided via Ms. Lim.

23 Q. Okay. So as you came into information from your fellow
24 agents, you were told that Ms. Lim had made the arrangements in
25 this case with Mr. Gan with regard to those pickups. Is that

1 right?

2 A. Yes.

3 Q. Okay. So Ms. Lim was -- she was intimately involved in the
4 pickups as far as you -- the information that came to you.

5 A. She had the part in passing that information to us, yes.

6 Q. Right. And you were not privy to any conversation she had,
7 if she had any, with Mr. Gan. Is that correct?

8 A. No.

9 Q. Okay. This is going to sound silly, I suspect, but I'm
10 about done.

11 I know you can finger -- strike that.

12 Can you fingerprint money?

13 A. I'm told yes.

14 Q. You haven't done it, though.

15 A. I haven't seen an example of it in my career.

16 Q. All right. But the money was packaged, that I saw, in
17 plastic. Is that right?

18 A. Yes. Some of it was. Sorry.

19 Q. Plastic is a medium upon which a fingerprint can be readily
20 recovered. Is that correct?

21 A. Typically, yes.

22 Q. And not only fingerprints now, but the fingerprint, if a
23 person is a secreter -- I think that's the terminology -- you
24 can actually pick up their DNA from a fingerprint. Is that
25 right?

1 A. I don't know about that part of it.

2 Q. Oh, you're not that -- that scientific on that, right?

3 A. Not my area.

4 Q. Okay. Have you ever heard of that being a case in your --
5 in relation to your work?

6 A. DNA from a fingerprint?

7 Q. Yes.

8 A. I have not heard of that.

9 Q. Okay. But the fingerprint certainly can be recovered. Is
10 that right?

11 A. From plastic?

12 Q. Yes.

13 A. I've seen that, yes.

14 Q. Do you know whether or not HSI, your group of people,
15 extracted any fingerprints from the plastic upon which -- in
16 which the money was wrapped?

17 A. I don't know. It may have happened.

18 Q. Okay.

19 MR. SEIDEN: Officer, if you would, remain -- Agent.

20 If you would remain seated there for a minute, I'll

21 double-check with my team. And I think we're done.

22 (Counsel conferring.)

23 MR. SEIDEN: Agent, thank you for your time. If
24 you'll remain seated there, I think counsel may have some
25 questions for you.

Daoud - Redirect by Rothblatt

1 THE COURT: All right. Any redirect?

2 MR. ROTHBLATT: Yes, Judge, briefly.

3 THE COURT: All right.

4 REDIRECT EXAMINATION

5 BY MR. ROTHBLATT:

6 Q. Good morning, Special Agent Daoud.

7 A. Good morning.

8 Q. You were asked some questions on cross-examination about
9 encrypted communications. Do you recall those questions?

10 A. Yes.

11 Q. And you testified about end-to-end encryption. What is
12 end-to-end encryption?

13 A. End-to-end encryption is -- is referring to the
14 communication as it -- as it passes from one party to the next.
15 It -- as opposed to a stationary piece of information at one
16 end or the other being stored on that device. It's a different
17 kind of encryption.

18 Q. Based on your training and experience, do you understand
19 that BlackBerry messages are end-to-end encrypted?

20 A. I'm not aware of their exact encryption method, but I
21 believe they did have a form of public key encryption.

22 Q. What about WhatsApp communications?

23 A. WhatsApp is definitely end-to-end encrypted.

24 Q. And based on your training and experience, do you
25 understand that law enforcement officials can capture WhatsApp

1 communications in real time?

2 A. They can't capture them in real time.

3 Q. Why not?

4 A. Because of the end-to-end encryption. Any information that
5 would be intercepted would make no sense.

6 Q. Do you recall being asked questions on cross-examination
7 about certain communications being marked for deletion?

8 A. Yes.

9 Q. And I believe you testified yesterday about certain
10 communications between defendant's phone and the 5188 number,
11 or Pan phone 1, and the 4888 number, Pan phone 2. Do you
12 recall that testimony?

13 A. Yes.

14 Q. And what, if anything, about those communications and
15 whether they were marked for deletion did you observe?

16 A. I -- what's -- what struck me as interesting is that --
17 that the entries that were deleted were all -- were usually
18 only related to those phone numbers.

19 Q. And when you say "marked for deletion," what does that
20 mean?

21 A. That would be like saying that a piece of information
22 put -- had a label put on it, said that we can reuse this space
23 when needed.

24 Q. And how does the user come into that process?

25 A. If you were going to delete a text message or an instant

1 message, that would be a manual process unless you reset the
2 entire device.

3 Q. And do you recall being asked questions on
4 cross-examination about Exhibit 304-9, the WhatsApp
5 communications between Pan and the defendant?

6 A. Yes.

7 Q. And what, if anything, did you notice about those
8 communications based on your review of the extraction report?

9 A. The empty content?

10 Q. Yes, the empty content in particular.

11 What -- you said that there are several reasons, on
12 cross-examination, why there may be an empty message. Can you
13 tell the jury what some of those reasons might be.

14 A. It could be that it was deleted and then the system then
15 reused that disc space. It could be that it was just an empty
16 message sent. That occurs occasionally. These are all ideas
17 that could explain it.

18 Q. Again, you were asked questions about the extraction report
19 for the phones seized from the defendant. Do you recall those
20 questions on cross-examination?

21 A. Yes.

22 Q. I'm going to direct your attention to Government
23 Exhibit 304-1.

24 MR. ROTHBLATT: Judge, this has been admitted into
25 evidence.

1 THE COURT: All right.

2 MR. ROTHBLATT: I'd ask to publish it.

3 BY MR. ROTHBLATT:

4 Q. Special Agent Daoud, do you see the "MSISDN" entry?

5 A. Yes.

6 Q. And do you see the number next to it, "523313192988"? Did
7 I read that correctly?

8 A. Yes.

9 Q. Can you tell the jury. What's an MSISDN?

10 A. It's a Mobile Station International Subscriber Directory
11 Number, or the phone number.

12 Q. And the 52 number in front of the phone number. Based on
13 your training and experience, what does the 52 reflect?

14 A. A Mexico-based number.

15 Q. I want to direct your attention now to Government
16 Exhibit 304-7. Do you recall being asked questions about this
17 on cross-examination?

18 A. Yes.

19 Q. And what is Government Exhibit 304-7?

20 A. The communications log.

21 Q. And you were asked questions on cross-examination about the
22 date range of this particular communications log. Do you
23 recall those questions?

24 A. Yes.

25 Q. Were the communications logs admitted into evidence the

1 totality of the communications logs captured on the extraction
2 report?

3 A. No.

4 Q. Were there others?

5 A. Yes.

6 MR. ROTHBLATT: Your Honor, may I have a moment?

7 THE COURT: You may.

8 (Counsel conferring.)

9 MR. ROTHBLATT: Nothing further, Judge.

10 THE COURT: Any recross?

11 MR. SEIDEN: Yes, very briefly.

12 REXCROSS-EXAMINATION

13 BY MR. SEIDEN:

14 Q. Didn't quite understand something. When you said that
15 there was a message that was not -- that we said had no
16 message -- you have the line? You said that one of the ways
17 you could do that is by deletion. Is that right?

18 A. There could be a -- you -- yeah. I mean, theoretically, if
19 you could reset your phone. Let's say you backed up the
20 message and then --

21 Q. Yeah, we're not --

22 A. Okay.

23 Q. -- talking about rebooting a phone. We're talking about I
24 got a message, and one part of the message says "[NO MESSAGE]."
25 Can I delete a part of a message? Or do I have to delete the

1 whole message?

2 A. The user can mark a whole message for deletion.

3 However, theoretically, the operating system may
4 reclaim that space in part.

5 Q. I got it. But it would -- would it reclaim the same space
6 all the time?

7 A. No. It's -- there's different approaches.

8 Q. Okay.

9 MR. SEIDEN: Thank you. I -- Agent, once again, I'm
10 done with this. Thank you again. Have a good day.

11 THE WITNESS: Thank you.

12 THE COURT: Any additional questions?

13 MR. ROTHBLATT: No, Judge.

14 But I think we failed to bring in the actual physical
15 phones, Government Exhibits 301 and 303 yesterday. So we would
16 move for those to be admitted into evidence.

17 THE COURT: Any objection?

18 MR. SEIDEN: I'm sorry. I -- I was listening to
19 something else.

20 THE COURT: Yeah. Go ahead and state it again.

21 MR. ROTHBLATT: Yes, Judge. I think we forgot to
22 physically move Government's Exhibits 301 and 303 into
23 evidence, the phones. So we'd ask to do that now.

24 MR. SEIDEN: Can we have a sidebar?

25 THE COURT: All right.

1 MR. SEIDEN: Normally I wouldn't care.

2 (At sidebar outside the hearing of the jury.)

3 THE COURT: Go ahead.

4 MR. SEIDEN: All hearsay. So is he going to take the
5 phone out? If he takes the phone out -- I mean, lay a
6 foundation or --

7 THE COURT: I thought these were offered yesterday.

8 COURT REPORTER: Can you move the package off the mic.

9 THE COURT: I thought these were offered yesterday. I
10 raised this, and the government thought they had been
11 offered --

12 MR. SEIDEN: I don't remember it being offered. Maybe
13 I'm just getting old and senile, but --

14 MR. FRANZBLAU: I think he -- we think they were
15 offered. It's out of an abundance of caution. I think he
16 offered it for identification, but we weren't certain if it was
17 actually moved into evidence.

18 You've stipulated to all the information on it.

19 MR. SEIDEN: I -- yeah. I'm not going to -- I don't
20 care what the stipulation is. I'm not going to agree that the
21 package -- if you want to put the phones in --

22 THE COURT: All right. Do you object --

23 MR. SEIDEN: -- knock yourself out.

24 THE COURT: Do you object to them opening these
25 packages and then putting them in a clear package with an

1 exhibit sticker on it?

2 MR. SEIDEN: I do not.

3 THE COURT: Okay. I don't think that's going to break
4 the chain of custody at this point.

5 MR. SEIDEN: You can ask him. They can ask him if
6 that's his --

7 MS. STEVENS: They did.

8 THE COURT: They did.

9 MR. SEIDEN: Okay.

10 THE COURT: He went through this already. So I'll --
11 301 and 303 are admitted in evidence in a separate package.

12 (Government Exhibits 301 and 303 admitted in evidence.)

13 MR. SEIDEN: I'm not going to win the appeal on the
14 chain of custody, so I'll stipulate to that, Judge.

15 THE COURT: There may be no appeal.

16 MR. SEIDEN: Okay.

17 THE COURT: So okay. So that will be -- they're both
18 admitted in evidence.

19 MR. SEIDEN: Okay, Judge.

20 MR. FRANZBLAU: Thank you, your Honor.

21 (In open court in the hearing of the jury.)

22 MR. SEIDEN: Your Honor, with that caveat, then we
23 will have no objection.

24 THE COURT: All right. 301 and 303 admitted, to be
25 packaged in a separate way that identifies them correctly as

1 301 and 303. They're admitted without objection.

2 All right. Any additional questions of this witness?

3 MR. FRANZBLAU: No, your Honor. United States rests.

4 THE COURT: All right. Sir, you're excused.

5 THE WITNESS: Thank you.

6 THE COURT: And the government rests its case?

7 MR. FRANZBLAU: Yes, your Honor.

8 THE COURT: All right. Ladies and gentlemen, we'll
9 take a brief break. And we'll have you back here -- not for
10 closing arguments. But what I would ask you to do is hand a
11 copy of your preliminary instructions to the court security
12 officer. If they're back in the jury room, give them to him
13 back there. But I want to make sure we get 14 copies back.

14 If you have notes on your preliminary jury
15 instructions that you want to transfer to your notepad, do that
16 back in the jury room and then give them to the court security
17 officer. But I'm going to give you new instructions, and I
18 want to make sure I get 14 back so we don't have the wrong
19 instructions for you.

20 So -- in fact, you can do all that back in the jury
21 room. I think that would make the most sense. Go back there,
22 and he'll collect them from you once you're comfortable that
23 you -- you want to give them back and if you have any notes
24 you've transferred them. Thank you.

25 COURT SECURITY OFFICER: All rise.

Rule 29(a) Motion for Judgment of Acquittal

1 (Jury out at 10:15 a.m.)

2 THE COURT: All right. Let's have the defendant --
3 government's rested. Is the defense going to put on any
4 evidence?

5 MR. SEIDEN: We are not.

6 But before I even address, that we have our motion --
7 Rule 29 motion, your Honor.

8 THE COURT: All right. Go ahead.

9 MR. SEIDEN: And, additionally, we are going to
10 additionally argue as to jurisdictional, on the use of money
11 laundering as an extraterritorial jurisdictional tool.

12 THE COURT: All right. And do you have any additional
13 argument on your Rule 29 motion?

14 MR. SEIDEN: Your Honor, I had learned during the
15 course of the case that you are keenly aware of the testimony
16 that has been going in.

17 We -- actually, it's your -- do you want to do it?

18 MS. STEVENS: No. Finish.

19 MR. SEIDEN: Okay. We do not perceive that the
20 government has established a burden pursuant -- they have not
21 established a *prima facie* case, first of all, with Count V --
22 going backwards, Count V at all because their witness is
23 particularly -- was particularly clear on that issue with
24 regard to the requirement for licensure in the state of
25 Illinois, that the transaction occurred in Illinois between --

Rule 29(a) Motion for Judgment of Acquittal

1 and I described the people that it occurred with, and they had
2 indicated they're the ones that would have to be licensed and
3 nobody else. That's -- that's one.

4 Similarly, transfers -- their -- their witnesses said
5 that there were -- thank you.

6 THE COURT: Thank you.

7 MR. SEIDEN: Their witnesses indicated that Mr. Gan
8 made no transfers in the United States, so that takes care of
9 II to IV.

10 Now, then there is the conspiracy, and I believe that
11 the government has failed to establish a *prima facie* case with
12 regard to that. I understand that you have heard the evidence
13 in the case. And you know I could argue all day. I don't
14 think it's necessary, your Honor. I think you have your arms
15 around it.

16 THE COURT: All right. Any response by the
17 government? Briefly.

18 MR. FRANZBLAU: Yes, your Honor. As to Counts I
19 through IV, there has been substantial evidence that the
20 defendant was knowingly causing -- from Mexico causing these
21 transactions to occur inside Illinois. You have Ms. Lim's
22 testimony, which that testimony alone hits on all of the
23 elements for Counts I through IV. She's substantially
24 corroborated by recordings of the defendant and, of course, the
25 video recordings of what happened next when these transactions

Rule 29(a) Motion for Judgment of Acquittal

1 occurred.

2 Then you have recordings during the transactions when
3 the defendant is checking in about how it's going and
4 complaining about how it's going and then recorded
5 conversations after when he's confirming that the transaction's
6 been completed. So he is all over these transactions in
7 Chicago, deeply enmeshed. I don't think I need to say more
8 about Counts I through IV.

9 As to Count V, the IDFPR witness testified that if you
10 are outside of Illinois causing these transactions to happen
11 and you're being paid to do it, you would have to register.
12 You'd have to be licensed if that's what you're doing as a
13 business; if you are doing this on behalf of third parties,
14 you're providing a service in return for payment, that you
15 would have to register.

16 So that's exactly what's going on in this case. You
17 don't have to be a brick-and-mortar business inside Illinois.
18 If you're outside and causing this stuff to happen inside, as
19 he testified very clearly, you need to register with the state.

20 THE COURT: All right.

21 MR. SEIDEN: Your Honor, 1956(f) requires -- it
22 requires presence in the United States. So -- we are arguing
23 it requires presence in the United States. That would be our
24 argument, your Honor.

25 THE COURT: All right. Well, Rule 29(b) allows me to

Rule 29(a) Motion for Judgment of Acquittal

1 reserve decision, which is what I'm going to do on this. The
2 extraterritorial argument was something made before trial in a
3 motion to dismiss the indictment. I ruled on that in some
4 detail.

5 But I'll reserve decision under Rule -- which I'm
6 allowed to do under Rule 29(b) on this motion. Your --
7 obviously, your arguments are preserved based on your motion
8 you've made right now.

9 MR. SEIDEN: Very well. So then --

10 THE COURT: Okay.

11 MR. SEIDEN: -- then -- so my record is complete, my
12 29(a) will be reserved to a 29(b).

13 THE COURT: Reserved under Rule 29(b). And I can
14 consider it based on the evidence that exists at this moment
15 when I either grant or deny the motion after there's been a
16 verdict.

17 (Counsel conferring.)

18 MR. SEIDEN: Okay. And on the (b), we're also talking
19 about enlargement. We're also going to be resisting the
20 enlargement of 1956 pursuant to Section (2). So that would be
21 part of our argument then.

22 THE COURT: I don't understand.

23 MR. SEIDEN: In other words, they can't enlarge
24 1956 -- we'll make a more -- a cogent argument when we do this
25 at the (b), your Honor. But I want to reserve the entire

Rule 29(a) Motion for Judgment of Acquittal

1 thing.

2 THE COURT: Well, the record will show what's
3 reserved.

4 MR. SEIDEN: Okay. Very good.

5 THE COURT: I'm not going to comment on what you have
6 or have not reserved. You've made your argument in brief,
7 which is what I asked for, a brief argument. I'm reserving
8 decision. And that's the ruling.

9 MR. SEIDEN: Your Honor, with regard to the defense
10 case --

11 THE COURT: Yes.

12 MR. SEIDEN: -- it is our intention to rest. I have
13 communicated with my client. And, once again this morning, as
14 late as this morning, my client does not choose -- does not
15 wish to testify.

16 I believe that the Court will want to do something
17 with regard to that.

18 THE COURT: That's correct.

19 And by the way, he was not present for our instruction
20 conference this morning. You waive his presence, correct?

21 MR. SEIDEN: We waived it last night, and we revisited
22 again this morning. We're fine.

23 THE COURT: All right. Very good.

24 Why don't you have your client come up here. And,
25 actually, will he be -- will a translator be able to work with

Waiver of Defendant's Right to Testify

1 him when he's up here?

2 MR. SEIDEN: Sure.

3 THE COURT: Okay.

4 All right, sir. Please raise your right hand.

5 (Defendant duly sworn.)

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Sir, you have a right to
8 testify if you want to.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: You have a constitutional right not to
12 testify.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: If you decide not to testify, I'll
16 instruct the jury that no inference or suggestion of guilt can
17 be drawn from the fact you did not testify.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Has your lawyer explained these rights to
21 you?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you discussed this -- this issue with
24 your lawyer?

25 THE DEFENDANT: Yes.

Waiver of Defendant's Right to Testify

1 THE COURT: Do you have any questions for me?

2 THE DEFENDANT: No.

3 THE COURT: Do you want to talk to your lawyer
4 privately on this issue any more?

5 THE DEFENDANT: We have discussed already.

6 THE COURT: Do you wish to discuss it any further with
7 your lawyer?

8 THE DEFENDANT: No. We have discussed this morning.

9 THE COURT: All right. Sir, then my question to you
10 is, do you want to testify or not?

11 THE DEFENDANT: I'm not going to testify.

12 THE COURT: All right. I find that the defendant --
13 Well, are there any additional questions the
14 government believes I should ask?

15 MR. FRANZBLAU: No, your Honor.

16 THE COURT: Are there any additional questions defense
17 agrees I should ask?

18 MS. STEVENS: No, your Honor.

19 THE COURT: Or believes I should ask.

20 MS. STEVENS: No, your Honor.

21 THE COURT: All right. I find the defendant has
22 knowingly waived his right to testify. And that completes the
23 colloquy.

24 All right. You can have a seat, sir.

25 THE DEFENDANT: Thank you.

1 THE COURT: Yes, sir? Mr. Seiden.

2 MR. SEIDEN: You're going to call the jury out, and
3 I'll rest?

4 THE COURT: Yeah. We'll call them out. You can
5 formally rest in front of the jury. I want to take a minute
6 and see how far we are away from getting the copies of
7 instructions made so I can tell them how long our next break
8 will be. But I think that should all -- we should do a formal
9 resting on the record -- we have to -- in front of them.

10 All right. So let's take a five-minute break right
11 now for me to find out where we're at on copying.

12 MR. FRANZBLAU: Thank you, Judge.

13 THE COURT: And is the government ready to proceed
14 after that?

15 MR. FRANZBLAU: Yes.

16 MR. ROTHBLATT: Yes.

17 THE COURT: With closings. All right.

18 MS. STEVENS: Thank you, your Honor.

19 THE COURT: So you ought to set up if you have --

20 MR. ROTHBLATT: Will do, Judge.

21 THE COURT: -- anything you're going to be using --
22 Off the record.

23 (Off-the-record discussion.)

24 (Recess at 10:25 a.m., until 10:30 a.m.)

25 THE COURT: All right. Parties ready to proceed?

1 MR. FRANZBLAU: Yes, Judge.

2 MR. SEIDEN: We are.

3 THE COURT: All right. We have instructions that we
4 will -- final set. We'll give one to defense, one to the
5 government.

6 MR. SEIDEN: Thank you.

7 THE COURT: A verdict form for each of you.

8 I think the interpreters wanted a --

9 MS. STEVENS: Your Honor --

10 MR. SEIDEN: We need one for the -- thank you.

11 LAW CLERK: It's coming.

12 MR. SEIDEN: And keep that together.

13 THE COURT: All right. Then let's bring in the jury.

14 And do you want to give the instructions to Dan.

15 He'll hand them out to them when they come in.

16 Dan, we will put on your chair 14 sets of
17 instructions. You can hand it to them as they come in. Thank
18 you.

19 COURT SECURITY OFFICER: All rise.

20 (Jury in at 10:36 a.m.)

21 THE COURT: All right. Please be seated, ladies and
22 gentlemen.

23 All right. The government has rested its case.

24 Mr. Seiden?

25 MR. SEIDEN: Your Honor, subject to the admission, if

Jury Charge (Final)

1 we -- so that we -- subject to the admission of any evidence
2 that we will suggest, at this time the defense will rest.

3 THE COURT: All right. Any rebuttal case by the
4 government?

5 MR. FRANZBLAU: No, your Honor.

6 THE COURT: All right. Ladies and gentlemen, you've
7 heard all the evidence you're going to hear in this case.

8 Ms. Krueger, you had mentioned to the court security
9 officer you wanted to make sure there are ways that you can
10 participate fully and hear what's going on in the jury room
11 during deliberations. We're going to make arrangements for
12 that. I'll address that shortly. But rest assured, you'll be
13 able to fully participate and hear what everyone else is saying
14 too. We'll make arrangements for that.

15 Ladies and gentlemen, you've all received a copy of
16 the final jury instructions. I'm going to read those to you.
17 Many are similar to the ones that I read to you at the
18 beginning of the case; some are different. Each instruction is
19 important. You'll have a copy of these instructions back with
20 you in the jury room. Again, it's not a memory test.

21 But I'm going to read them to you now. And after
22 that, we'll have the government's closing argument.

23 Members of the jury, I'll now instruct you on the law
24 that you must follow in deciding this case. Each of you has a
25 copy of these instructions to use in the jury room. You must

Jury Charge (Final)

1 follow all of my instructions about the law, even if you
2 disagree with them. This includes the instructions I gave you
3 before the trial, any instructions I gave you during the trial,
4 and the instructions I'm giving now.

5 As jurors, you have two duties. Your first duty is to
6 decide the facts from the evidence that you saw and heard here
7 in court. This is your job, not my job or anyone else's job.

8 Your second duty is to take the law as I give it to
9 you, apply it to the facts, and decide if the government has
10 proved the defendant guilty beyond a reasonable doubt.

11 You must perform these duties fairly and impartially.
12 Do not let sympathy, prejudice, fear, or public opinion
13 influence you. In addition, do not let any person's race,
14 color, religion, national ancestry, or gender influence you.

15 You must not take anything I said or did during the
16 trial as indicating what I think of the evidence or what I
17 think your verdict should be.

18 The charges against the defendant are in a document
19 called an indictment. You will have a copy of the indictment
20 during your deliberations.

21 The indictment in this case charges that the defendant
22 committed the crimes of conspiracy to commit money laundering,
23 money laundering, and operating an unlicensed money
24 transmitting business under Illinois law. The defendant has
25 pleaded not guilty to the charges.

Jury Charge (Final)

1 The indictment is simply the formal way of telling the
2 defendant what crimes he is accused of committing. It is not
3 evidence that the defendant is guilty. It does not even raise
4 a suspicion of guilt.

5 The defendant is presumed innocent of each and every
6 one of the charges. This presumption continues throughout the
7 case. It is not overcome unless, from all the evidence in the
8 case, you're convinced beyond a reasonable doubt that the
9 defendant is guilty as charged.

10 The government has the burden of proving the
11 defendant's guilt beyond a reasonable doubt. This burden of
12 proof stays with the government throughout the case.

13 The defendant is never required to prove his
14 innocence. He is not required to produce any evidence at all.

15 You must make your decision based only on the evidence
16 you saw and heard in court. Do not consider anything you may
17 have seen or heard outside of court, including anything from
18 the newspaper, television, radio, the Internet, or any other
19 source.

20 The evidence includes only what the witnesses said
21 when they were testifying under oath, the exhibits that I
22 allowed into evidence, and the stipulations the lawyers agreed
23 to. A stipulation is an agreement that certain facts are true
24 or that a witness would have given certain testimony.

25 Nothing else is evidence. The lawyers' statements and

Jury Charge (Final)

1 arguments are not evidence. If what a lawyer said is different
2 from the evidence as you remember it, the evidence is what
3 counts. The lawyers' questions and objections, likewise, are
4 not evidence.

5 A lawyer has a duty to object if he thinks a question
6 or evidence is improper. If I sustained objections to
7 questions the lawyers asked, you must not speculate on what the
8 answers might have been. If I struck testimony or an exhibit
9 from the record or told you to disregard something, you must
10 not consider it.

11 You may have heard the terms "direct evidence" and
12 "circumstantial evidence." Direct evidence is evidence that
13 directly proves a fact. Circumstantial evidence is evidence
14 that indirectly proves a fact.

15 For example, direct evidence that it was raining
16 outside is testimony by a witness that it was raining.
17 Circumstantial evidence that it is raining outside is the
18 observation of someone entering a room carrying a wet umbrella.

19 You are to consider both direct and circumstantial
20 evidence. The law does not say that one is better than the
21 other. It is up to you to decide how much weight to give to
22 any evidence, whether direct or circumstantial.

23 Give the evidence whatever weight you decide it
24 deserves. Use your common sense in weighing the evidence, and
25 consider the evidence in light of your own everyday experience.

Jury Charge (Final)

1 People sometimes look at one fact and conclude from it
2 another fact exists. That's called an inference. You're
3 allowed to make reasonable inferences so long as they're based
4 on the evidence.

5 Part of your job as jurors is to decide how believable
6 each witness was and how much weight to give each witness's
7 testimony. You may accept all of what a witness said or part
8 of it or none of it.

9 Some factors you may consider include:

10 The intelligence of the witness;

11 The witness's ability and opportunity to see, hear, or
12 know the things the witness testified about;

13 The witness's demeanor -- I'm sorry.

14 The witness's memory;

15 The witness's demeanor;

16 Whether the witness had any bias, prejudice, or other
17 reason to lie or slant the testimony;

18 The truthfulness and accuracy of the witness's
19 testimony in light of other evidence presented; and

20 Inconsistent or consistent statements or conduct by
21 the witness.

22 Do not make any decision simply by counting the number
23 of witnesses who testified about a certain point. What is
24 important is how truthful and accurate the witnesses were and
25 how much weight you think their testimony deserves.

Jury Charge (Final)

1 If you took notes during the trial, you may use them
2 during deliberations to help you remember what happened during
3 the trial. You should use your notes only as aids to your
4 memory. The notes are not evidence. All of you should rely on
5 your independent recollections of the evidence, and you should
6 not be unduly influenced by the notes of other jurors. Notes
7 are not entitled to any more weight than the memory or
8 impressions of each juror.

9 The defendant has an absolute right not to testify or
10 present evidence. You may not consider it in -- you may not
11 consider in any way the fact that the defendant did not testify
12 or present evidence. You should not even discuss it in your
13 deliberations.

14 It is proper for an attorney to interview any witness
15 in preparation for trial.

16 You've heard testimony from witnesses Wei Li and Seok
17 Pheng Lim, who expect a benefit in return for their testimony
18 and cooperation with the government.

19 You also heard testimony from Seok Pheng Lim -- heard
20 testimony that Seok Pheng Lim has pled guilty to one of the
21 crimes the defendant is charged with committing. You may not
22 consider Lim's guilty plea as evidence against the defendant.

23 You must give Wei Li and Seok Pheng Lim's testimony
24 whatever weight you believe is appropriate, keeping in mind you
25 must not -- you must consider that testimony with caution and

Jury Charge (Final)

1 great care.

2 You've heard a witness, namely, HSI Special Agent Jill
3 Dennewitz, who gave opinions and testimony about how drug
4 traffickers and money launderers operate and about her
5 interpretations of certain transcripts. You do not have to
6 accept this witness's opinions or testimony. You should judge
7 this witness's opinions and testimony the same way you judge
8 the testimony of any other witness. In deciding how much
9 weight to give these opinions and testimony, you should
10 consider the witness's qualifications, how she reached her
11 opinions and conclusions, and the factors I've described for
12 determining the believability of testimony.

13 During the trial, Mandarin and Spanish language
14 recordings, application communications, and text messages were
15 admitted into evidence. You were also given English
16 translations of those recordings, communications, and text
17 messages so you can consider the contents of the recordings,
18 communications, and text messages. You may not rely on any
19 knowledge you may have of the Mandarin and Spanish languages.
20 Rather, your consideration of the transcriptions should be
21 based on the evidence introduced at trial.

22 Portions of recorded conversations have been deleted
23 as non-pertinent. You should not infer or speculate that
24 important information has been withheld from you either by the
25 government or the defendant.

Jury Charge (Final)

1 You've heard recorded conversations and seen video
2 recordings. This is proper evidence you should consider
3 together with and in the same way you consider the other
4 evidence.

5 You were also given transcripts of the conversations
6 on the recordings to help you follow the recordings as you
7 listened to them. The recordings of the conversations in
8 English are the evidence of what was said and who said it. The
9 transcripts of the conversations in English are not evidence.
10 If you noticed any differences between what you heard in the
11 conversations and what you read in the transcripts, your
12 understanding of the recording is what matters. In other
13 words, you must rely on what you heard, not what you read. And
14 if you could not hear or understand certain parts of the
15 recordings, you must ignore the transcripts as far as those
16 parts are concerned.

17 I'll be providing you with the recordings of the
18 conversations in English and a laptop computer with
19 instructions on its use. It's up to you to decide whether to
20 listen to the recordings during your deliberations. You may,
21 if you wish, rely on your recollections of what you heard
22 during the trial.

23 You'll also get copies of the videos that were shown
24 during trial. You can play them on the computer also or choose
25 to rely on your memory of what was in those videos.

Jury Charge (Final)

1 Certain charts and graphs were shown to you to help
2 explain other evidence that was admitted. These charts and
3 graphs are not themselves evidence or proof of any facts, so
4 you will not have these particular charts and graph -- graphics
5 during your deliberations.

6 And when I said earlier "graphs," I meant "graphics."

7 If you do not correctly reflect -- if they do not
8 correctly reflect the facts shown by the evidence, you should
9 disregard the charts and graphics and determine the facts from
10 the underlying evidence.

11 You should not speculate why any other person whose
12 name you heard during the trial is not currently on trial
13 before you.

14 The indictment charges that the crime happened "on or
15 about" certain dates. The government must prove that the crime
16 happened reasonably close to those dates. The government is
17 not required to prove that the crime happened on those exact
18 dates.

19 The defendant has been accused of more than one crime.
20 The number of charges is not evidence of guilt and should not
21 influence your decision.

22 You must consider each charge separately. Your
23 decision on one charge, whether it's guilty or not guilty,
24 should not influence your decision on any other charge.

25 A person acts knowingly if he realizes what he is

Jury Charge (Final)

1 doing and is aware of the nature of his conduct and does not
2 act through ignorance, mistake, or accident. In deciding
3 whether the defendant acted knowingly, you may consider all of
4 the evidence, including what the defendant did or said.

5 A defendant's presence at the scene of a crime and
6 knowledge that a crime is being committed is not sufficient by
7 itself to establish the defendant's guilt.

8 If a defendant performed acts that advanced the crime
9 but had no knowledge the crime was being committed or was about
10 to be committed, those acts are not sufficient by themselves to
11 establish the defendant's guilt.

12 A defendant's association with persons involved in a
13 crime is not sufficient by itself to prove his participation in
14 the crime.

15 Count I of the indictment charges the defendant with
16 conspiracy. In order for you to find the defendant guilty of
17 this charge, the government must prove both of the following
18 elements beyond a reasonable doubt:

19 1. The conspiracy as charged in Count I existed,
20 namely, that:

21 a. The defendant and others conspired to:
22 i. knowingly conduct a financial
23 transaction affecting interstate and foreign commerce;
24 ii. which transaction involved the
25 proceeds of unlawful activity, namely, buying, selling,

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1 importation, and otherwise dealing in a controlled substance,
2 knowing that the transaction was designed, in whole or in part,
3 to conceal and disguise the nature, location, source,
4 ownership, and control of the proceeds of that unlawful
5 activity; and

6 iii. that while conducting such financial
7 transaction knew that the property involved in the transaction
8 represented the proceeds of some form of unlawful activity; or

9 b. Defendant and others conspired to:

10 i. transport, transmit, and transfer a
11 monetary instrument and funds involving the proceeds of
12 unlawful activity, namely, buying, selling, importation, and
13 otherwise dealing in a controlled substance, from a place in
14 the United States to or through a place outside the United
15 States;

16 ii. knowing that the monetary instrument and
17 funds involved in the transportation, transmission, and
18 transfer represented the proceeds of some form of unlawful
19 activity; and

20 iii. knowing that such transportation,
21 transmission, and transfer was designed, in whole or in part,
22 to conceal and disguise the nature, location, source,
23 ownership, and control of the proceeds.

24 And:

25 2. The defendant knowingly became a member of the

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1 conspiracy with an intent to advance the conspiracy.

2 If you find from your consideration of all the
3 evidence the government has proved each of these elements
4 beyond a reasonable doubt, then you should find the defendant
5 guilty. If, on the other hand, you find from your
6 consideration of all the evidence that the defendant [*sic*] has
7 proved -- has failed to prove any one of these elements beyond
8 a reasonable doubt, then you should find the defendant not
9 guilty.

10 And when the -- beginning of that instruction, so it's
11 clear, it's -- the second sentence says, "In order for you to
12 find the defendant guilty of this charge, the government must
13 prove both of the following elements beyond a reasonable
14 doubt," it is -- 1. is "The conspiracy as charged in Count I
15 existed," with all the information below it, two separate ways
16 of violating it. And then 2. over on the second page is the
17 second element that has to be proven. 1. has several ways of
18 being proven, and then number 2. has to be proven. And both of
19 those must be proven beyond a reasonable doubt before you can
20 find the defendant guilty. And if the government fails to
21 prove both of those elements beyond a reasonable doubt, you
22 must find the defendant not guilty.

23 All right. A conspiracy is an express or implied
24 agreement between two or more persons to commit a crime.
25 Conspiracy may be proven even if its goals were not

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1 accomplished.

2 In deciding whether the charged conspiracy existed,
3 you may consider all the circumstances, including the words and
4 acts of each of the alleged participants.

5 To be a member of a conspiracy, the defendant does not
6 need to join it at the beginning, and he does not need to know
7 all of the other members or all the means by which the illegal
8 goals of the conspiracy were to be accomplished. The
9 government must prove beyond a reasonable doubt the defendant
10 was aware of the illegal goals of the conspiracy and knowingly
11 joined the conspiracy.

12 The defendant is not a member of the conspiracy just
13 because he knew and/or associated with people who were involved
14 in a conspiracy, knew there was a conspiracy, and/or was
15 present during conspiratorial discussions.

16 In deciding whether the defendant joined the charged
17 conspiracy, you must base your decision only on what the
18 defendant did or said. To determine what the defendant did or
19 said, you may consider the defendant's own words or acts. You
20 may also use the words or acts of other persons to help you
21 decide what the defendant did or said.

22 A government agent cannot be a co-conspirator.

23 Evidence has been introduced of recorded conversations
24 and other communications in which one participant was --

25 (Sotto voce discussion between law clerk and the Court.)

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1 THE COURT: Page 25. Oh, I'm sorry. If I skipped
2 page 24, I'll read it now.

3 A conspiracy is an express or implied agreement
4 between two or more persons to commit a crime. A conspiracy
5 may be proven even if its goals were not accomplished.

6 In deciding whether the charged conspiracy existed,
7 you may consider all of the circumstances, including the words
8 and acts of each of the alleged participants.

9 I believe I read 25.

10 Let's go off the record for a minute.

11 (Off-the-record discussion.)

12 THE COURT: Back on the record.

13 To be a member of a conspiracy, the defendant does not
14 need to join it at the beginning and does not need to know all
15 the other members or all the means by which the illegal goals
16 of the conspiracy were to be accomplished. The government must
17 prove beyond a reasonable doubt that the defendant was aware of
18 the illegal goals of the conspiracy and knowingly joined the
19 conspiracy.

20 The defendant is not a member of a conspiracy just
21 because he knew and/or associated with people who were involved
22 in the conspiracy, knew there was a conspiracy, and/or was
23 present during the conspiratorial discussions.

24 In deciding whether the defendant joined the charged
25 conspiracy, you must base your decision only on what the

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1 defendant did or said. To determine what the defendant did or
2 said, you may consider the defendant's own words or acts. You
3 may also use the words or acts of other persons to help you
4 decide what the defendant did or said.

5 All right. On to page 26.

6 A government agent cannot be a co-conspirator.

7 Evidence has been introduced of recorded conversations
8 and other communications in which one person was, at the time
9 of the communication, communicating [*sic*] with the government.
10 You may consider that person's statement in these
11 communications only for a limited purpose. Specifically, you
12 may consider that person's statement only to help you
13 understand what other people in the communications were talking
14 about.

15 With regard to Seok Pheng Lim, this instruction
16 applies to recorded communications in which she participated
17 beginning May 3rd, 2018, at which time she began cooperating
18 with the government.

19 MR. FRANZBLAU: Judge, excuse me. I'm sorry to
20 interrupt you. I think that you may have misread one word in
21 the first sentence of the second paragraph.

22 THE COURT: All right. Then I'll reread -- the first
23 sentence of the second paragraph?

24 MR. FRANZBLAU: Yeah, beginning with "Evidence has
25 been introduced."

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1 THE COURT: All right. I'll reread it. I apologize.

2 Evidence has been introduced of recorded conversations
3 and other communications in which one person was, at the time
4 of the communication, cooperating with the government.

5 All right. And the rest of the instruction has been
6 read to you.

7 All right. On page 27.

8 Count I of the indictment charges that the defendant
9 conspired to commit two different offenses as set forth in the
10 indictment. In other words, it's charged that defendant
11 conspired to commit different, separate substantive crimes or
12 offenses.

13 The government is not required to prove the defendant
14 conspired to commit both of these offenses. However, the
15 government is required to prove beyond a reasonable doubt that
16 the defendant conspired with one or more people to commit at
17 least one of these offenses -- one of those offenses.

18 To find that the government has proven this, you must
19 unanimously agree upon which of the different offenses the
20 defendant conspired to commit. If you cannot agree in that
21 manner, you must find the defendant not guilty.

22 As it applies to Counts I through IV, the term
23 "proceeds" is defined as any property derived from or obtained
24 or retained, directly or indirectly, through some form of
25 unlawful activity, including the gross receipts of such

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1 activity.

2 It is a felony under federal law for any person,
3 without authorization, to knowingly or intentionally
4 manufacture, distribute, or dispense, or possess with intent to
5 manufacture, distribute, or dispense, a controlled substance.

6 Heroin, cocaine, crystal methamphetamine, and
7 marijuana are controlled substances.

8 As it applies to Counts I through IV, the term
9 "financial transaction" means a transfer, delivery, or other
10 disposition involving one or more monetary instruments, which
11 in any way or degree affects interstate commerce or a transfer
12 between accounts, exchange of currency, involving the use of a
13 financial institution which is engaged in or the activities of
14 which affect interstate ... commerce.

15 The term "monetary instruments" includes currency of
16 the United States.

17 The term "financial institution" includes, for
18 example, commercial banks.

19 "Interstate commerce" means trade, transactions,
20 transportation, or communication between any point in a state
21 and any place outside of that state, or between two points
22 within a state through a place outside the state. "Foreign
23 commerce" means trade, transactions, transportation, or
24 communication between a point in one country and a place
25 outside the country -- outside that country, or between two

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1 points within a country through a place outside that country.

2 When an individual or financial institution in
3 Illinois is engaged in commerce outside of that state, or when
4 an individual or financial institution in Illinois purchases
5 goods or services -- services which come from outside that
6 state, then the activities of that individual and financial
7 institution affect interstate commerce.

8 The government must prove that it was foreseeable that
9 defendant's acts would affect interstate or foreign commerce.
10 The government need not prove the defendant knew or intended
11 that his actions would affect interstate or foreign commerce.

12 The term "conceal or disguise" means to hide the
13 nature, the location, the source, the ownership, or the control
14 of the proceeds of specified unlawful activity.

15 Counts II, III, and IV of the indictment charge the
16 defendant with money laundering by concealment. In order for
17 you to find the defendant guilty of each of these charges, the
18 government must prove each of the following elements beyond a
19 reasonable doubt for each count:

20 (1) The defendant knowingly conducted or attempted to
21 conduct a financial transaction; and

22 (2) Some or all of the property involved in the
23 financial transaction was proceeds of the buying and selling or
24 otherwise dealing in controlled substances; and

25 (3) The defendant knew that the property involved in

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1 the financial transaction represented proceeds of some form of
2 unlawful activity; and

3 (4) The defendant knew that the transaction was
4 designed, in whole or in part, to conceal or disguise the
5 nature, the location, the source, the ownership, or the control
6 of the proceeds involved.

7 If you find from your consideration of all the
8 evidence the government has proved each of these elements
9 beyond a reasonable doubt as to the charge you're considering,
10 then you should find the defendant guilty of the charge -- of
11 that charge.

12 If, on the other hand, you find from your
13 consideration of all the evidence that the government has
14 failed to prove any one of these elements beyond a reasonable
15 doubt as to the charge you are considering, then you should
16 find the defendant not guilty of that charge.

17 As to Counts II through V, any person who knowingly
18 aids, counsels, commands, induces, or procures the commission
19 of an offense may be found guilty of that offense if he
20 knowingly participated in the criminal activity and tried to
21 make it succeed.

22 If a defendant knowingly causes the acts of another,
23 then that defendant is responsible for those acts as though he
24 personally committed them.

25 Count V of the indictment charges the defendant with

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1 operating an unlicensed money transmitting business. In order
2 for you to find the defendant guilty of this charge, the
3 government must prove each of the following elements beyond a
4 reasonable doubt:

5 (1) The defendant knowingly conducted, controlled,
6 managed, supervised, directed, or owned all or part of a money
7 transmitting business; and

8 (2) Which business affected interstate or foreign
9 commerce in any manner or degree; and

10 (3) Which business was operated in Illinois; and

11 (4) Which business was required to be licensed in
12 Illinois;

13 (5) Which business was operated without such required
14 license; and

15 (6) Illinois law punished the lack of license as a
16 misdemeanor or a felony.

17 If you find from your consideration of all the
18 evidence that the government has proved each of these elements
19 beyond a reasonable doubt as to the charge you are considering,
20 then you should find the defendant guilty of that charge.

21 If, on the other hand, you find from your
22 consideration of all the evidence that the government has
23 failed to prove any one of these elements beyond a reasonable
24 doubt as to the charge you are considering, then you should
25 find the defendant not guilty of that charge.

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1 The term "money transmitting" includes transferring
2 funds on behalf of the public by any and all means, including,
3 but not limited to, transfers within this country or to
4 locations abroad by wire, check, draft, facsimile, or courier.

5 Illinois state law requires a license to do business
6 as a money transmitter. It is a felony to do business as a
7 money transmitter without a license.

8 Under Illinois law, a "money transmitter" means a
9 person who is located in or doing business in Illinois and who
10 directly or through authorized sellers does any of the
11 following in this state:

12 (1) Sells or issues payment instruments;

13 (2) Engages in the business of receiving money for
14 transmission or transmitting money; or

15 (3) Engages in the business of exchanging, for
16 compensation, money of the United States government or a
17 foreign government to or from money of another government.

18 "Under Illinois law, 'transmitting money' means the
19 transmission of money by any means, including transmissions to
20 or from locations within the United States or to and from
21 locations outside the United States by payment instrument,
22 facsimile or electronic transfer, or otherwise, and includes
23 bill payment services."

24 The government has the burden of proving the defendant
25 was not entrapped by government agents and informants. The

Jury Charge (Final)

1 government must prove beyond a reasonable doubt either:

2 (1) Neither government agents nor government
3 informants induced the defendant to commit the offense; or

4 (2) The defendant was predisposed to commit the
5 offense before he had contact with government agents or
6 informants.

7 I'll now define what I mean by the terms "induce" and
8 "predisposed."

9 A government agent or informant "induces" a defendant
10 to commit a crime: (1) if the agent or informant solicits the
11 defendant to commit the crime and (2) does something in
12 addition that would influence a person to commit a crime that
13 the person would not commit if left to his own devices. This
14 other conduct -- conduct may consist of repeated attempts at
15 persuasion; coercive tactics; pleas based on need, sympathy, or
16 friendship; or any other conduct that creates a risk that a
17 person who would not commit the crime is left -- if left to his
18 own devices will do so in response to the efforts of the agent
19 or informant.

20 A defendant is "predisposed" to commit the crime --
21 charged crime if, before he was approached by a government
22 agent or informant, he was ready and willing to commit the
23 crime and likely would have committed it without the
24 intervention of an agent or informant, or he wanted to commit
25 the crime but had not yet found the means.

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1 Predisposition requires more than a mere desire, urge,
2 or inclination to engage in the charged crime. Rather, it
3 concerns the likelihood the defendant would have committed the
4 crime if the agent or informant had not approached him.

5 In deciding whether the government has met its burden
6 of proving that the defendant was predisposed to commit the
7 crime, you may consider the defendant's character or
8 reputation; whether the government initially suggested the
9 criminal activity; whether the defendant engaged in the
10 criminal activity for profit; whether the defendant showed
11 any -- showed a reluctance to commit the crime that was
12 overcome by persuasion by the agent or informant; and the
13 nature of the inducement or persuasion that was used.

14 These last instructions I'm going to read to you after
15 the closing arguments.

16 So with that, is the government ready to give its
17 closing argument?

18 MR. ROTHBLATT: Yes, Judge.

19 THE COURT: You may proceed.

20 And, Mr. Rothblatt, do you want this hooked into the
21 computer or --

22 MR. ROTHBLATT: Yes, please, Judge, to the desk here.

23 THE COURT: It's at the government table or --

24 MR. ROTHBLATT: Yes.

25 THE COURT: You have it there. Okay.

1 MR. ROTHBLATT: May I proceed, Judge?

2 THE COURT: You may.

3 (Closing arguments of counsel not herein transcribed.)

4 THE COURT: All right, ladies and gentlemen. We're
5 going to take a brief recess, and then you're going to come
6 back. I'm going to give you the final instructions, and then
7 we'll have you go back and you'll begin to deliberate. But I
8 need to take a short recess before that occurs.

9 So, once again, you haven't received the last of the
10 instructions, so don't discuss the case among yourselves or
11 with anyone else while you're back there.

12 I don't expect this to last more than five or ten
13 minutes, but, once again, my word has been broken many times.
14 But I'm going to try and make it five to ten minutes, and then
15 we'll come out for the final two or three instructions.

16 Thank you.

17 COURT SECURITY OFFICER: All rise.

18 (Jury out at 2:25 p.m.)

19 (Defendant exits the courtroom.)

20 THE COURT: All right. Please be seated.

21 In looking through the last of the instructions, I
22 don't see in here the *Silvern* instruction, the 7.03.

23 MR. SEIDEN: Why would we need that now?

24 THE COURT: Well, that is given before -- I typically
25 give it before the jury goes out. It requires -- it tells them

1 they need a unanimous verdict. It's a critical instruction.

2 MR. ROTHBLATT: Yeah, Judge. That should be in there.

3 MR. FRANZBLAU: That was a major oversight.

4 THE COURT: And so I've asked my law clerk -- that's
5 the only reason I took a recess, by the way. I've asked my law
6 clerk to print it up.

7 But, Mr. Seiden, I give this routinely in every civil
8 and criminal case. It's the last instruction typically that's
9 read to a jury. It's reread if they're having some difficulty
10 reaching unanimous verdict.

11 MR. SEIDEN: When I see that, it's usually a primer or
12 a *Silvern* instruction when they can't reach a verdict.

13 THE COURT: Well, it's -- actually, the Seventh
14 Circuit recommends giving it now.

15 MR. SEIDEN: Okay.

16 THE COURT: And I always do. And it's an oversight by
17 me too that I should have seen this. But I -- what I'm going
18 to do is read that to the jury. We're going to hand -- excuse
19 me -- hand out 12 copies of it to the jury so they have it,
20 just say it's an additional instruction to add to their pack.

21 And I'll make sure when this is printed up -- because
22 there's language in there about the defense. So let's make
23 sure we have the correct language in there before we give it to
24 the jury.

25 MR. SEIDEN: Very well.

1 THE COURT: But it's 7.03. You might want to all look
2 it up. And if you -- there's a couple brackets there. See if
3 there's any particular language you want there.

4 MR. FRANZBLAU: Absolutely. Thank you, Judge.

5 THE COURT: All right. Okay.

6 Off the record.

7 (Off-the-record discussion.)

8 THE COURT: All right. Then let's get 7.03 and make
9 sure it's read to the jury.

10 MR. FRANZBLAU: Thank you, Judge.

11 THE COURT: Okay.

12 (Recess at 2:28 p.m., until 2:31 p.m.)

13 THE COURT: All right. In the original pack of
14 instructions, we did not include the 7.0 -- what is it? 7 --

15 MS. STEVENS: 3?

16 MR. SEIDEN: 7.03.

17 MS. STEVENS: 7.02? I forget.

18 THE COURT: (Continuing) -- Pattern 7.03, which is
19 also known as a *Silvern* instruction.

20 We've now included it. I've run the language by both
21 the government and defense. This is word for word what's in
22 the pattern instruction. They've all agreed to that language.

23 And so when the jury comes back -- we'll make multiple
24 copies of this, by the way. We'll give one to each juror. And
25 then when they come back, I'm going to read pages 40 and 41 of

1 the set of instructions they have. I'll read this last
2 instruction, which I'll tell them should be a supplement to
3 what they have in their packet.

4 I'm not going to read the verdict form again. They
5 have -- they've seen it. I read it to them at the beginning.
6 I'll tell them the verdict form is -- will be given, and I'll
7 hand it to the court security officer to give it to him.

8 I'm going to swear the court reporter/interpreter for
9 Ms. Krueger and give her instructions and so both the jury
10 knows also what Ms. Krueger -- or Ms. Dillon's role --
11 Ms. Dillon's role is back there.

12 And then I'm going to -- after that is done, I'll
13 excuse them and ask Mr. Rodriguez and Mr. Munier -- I believe
14 that's how it's pronounced -- to remain in the courtroom. They
15 are our alternate jurors. I'll dismiss them, tell them not to
16 discuss the cases in case they need to be recalled if one of
17 our 12 jurors becomes ill or unable to participate in
18 deliberations.

19 MR. SEIDEN: So I can't give them a watch out there in
20 the hall?

21 THE COURT: You cannot. You cannot because they are
22 potentially going to become jurors in the case --

23 MR. SEIDEN: I know.

24 THE COURT: -- if the others can't.

25 That's the procedure we're going to follow. Any

1 objection to anything I've just said?

2 MR. FRANZBLAU: No, your Honor.

3 MS. STEVENS: No, your Honor.

4 MR. SEIDEN: No.

5 MS. STEVENS: But I do have something to put on the
6 record. I know we spoke off the record about --

7 THE COURT: By the way, you're waiving your client's
8 presence for this portion?

9 MR. SEIDEN: I am.

10 MS. STEVENS: Yes.

11 THE COURT: Okay.

12 MS. STEVENS: I know we spoke off the record about the
13 situation with the hard-of-hearing juror.

14 THE COURT: Yes.

15 MS. STEVENS: And we had some discussions about making
16 sure that neither --

17 THE COURT: Yes.

18 MS. STEVENS: -- the hard-of-hearing juror nor any
19 other juror could go back and look at any of the transcripts
20 from --

21 THE COURT: Yeah.

22 MS. STEVENS: -- the trial.

23 THE COURT: Ms. Dillon has -- is going to reboot the
24 computer, if I'm saying it correctly, or, if not reboot it,
25 open a new file --

1 MS. STEVENS: Perfect.

2 THE COURT: -- which means all of the transcriptions
3 from the trial itself are not available to either Ms. Krueger
4 or any other juror. They can't look, nor can she, at prior
5 testimony.

6 MS. STEVENS: Perfect. Thank you.

7 THE COURT: Okay.

8 MR. SEIDEN: The 29 will be entered and continued
9 until --

10 THE COURT: Pardon me?

11 MR. SEIDEN: 29(b) will be entered and continued at
12 this point?

13 THE COURT: That's correct.

14 MR. SEIDEN: Okay.

15 THE COURT: You're renewing it right now?

16 MR. SEIDEN: No.

17 MS. STEVENS: Yeah.

18 MR. SEIDEN: No, no, no. I just want to make sure
19 that we don't forget it. It's --

20 THE COURT: Yeah. It's been entered and continued.
21 I'll deal with it --

22 MR. SEIDEN: You won't forget it. I want to make sure
23 that it is of record, that it will be after the --

24 THE COURT: After the verdict. If necessary, I'll
25 consider it at that time.

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1 All right. We have our --

2 LAW CLERK: Copies for everybody.

3 THE COURT: -- copies for everyone. Why don't you put
4 them over for Dan to hand out. And we'll bring in the jury.

5 And the government has a clean computer?

6 MR. ROTHBLATT: Yes. Defense checked it as well.

7 THE COURT: Okay. Very good.

8 COURT SECURITY OFFICER: All rise.

9 (Jury in at 2:38 p.m.)

10 THE COURT: All right. Please be seated, ladies and
11 gentlemen.

12 The court security officer has one additional
13 instruction I want to give you. You should have 14 copies
14 there. If you can hand them out, please.

15 This is one additional instruction I'll be reading you
16 that was not in the original packet.

17 All right. Does everyone have a copy? Please raise
18 your hand if you don't have a copy of the instruction I just
19 handed out. We're missing one? All right. Here's an extra
20 one in the front row, so we'll hand it back to you. Thank you.

21 All right. I'd ask you to turn to page 40 of your
22 instruction packet.

23 All right. Once you're all in the jury room, the
24 first thing you should do is choose a foreperson. The
25 foreperson should see to it that your discussions are carried

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1 on in an organized way and that everyone has a fair chance to
2 be heard. You may discuss the case only when all jurors are
3 present.

4 Once you start deliberating, do not communicate about
5 the case or your deliberations with anyone except other members
6 of your jury. You may not communicate with others about the
7 case or your deliberations by any means, including oral or
8 written communication, or any electronic communication, such as
9 by phone, text, instant messenger, or the Internet or any
10 websites.

11 If you need to communicate with me while you're
12 deliberating, send a note through the court security officer.
13 The note should be signed by the foreperson or by one or more
14 members of the jury. To have a complete record of this trial,
15 it's important you do not communicate with me except by a
16 written note. I may have to talk to the lawyers about your
17 message, so it may take me some time to get back to you. You
18 may continue your deliberations while you wait for my answer.

19 Please be advised that transcripts of trial testimony
20 are not available to you. You must rely on your collective
21 memory of the testimony.

22 If you send me a message, do not include the breakdown
23 of any votes you may have conducted. In other words, don't
24 tell me you're split 6-6 or 8-4 or whatever your vote happens
25 to be.

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1 A verdict form has been prepared for you. You will
2 take this form with you to the jury room. When you've reached
3 unanimous agreement, your foreperson will fill in, date, and
4 sign the verdict form. Each of you will sign it.

5 Advise the court security officer once you've reached
6 a verdict. When you come back to the courtroom, I'll read the
7 verdict aloud.

8 And, finally, the handout I gave you, I'm going to
9 read that.

10 The verdict must represent the considered judgment of
11 each juror. Your verdict, whether it is guilty or not guilty,
12 must be unanimous. You should make every reasonable effort to
13 reach a verdict. In doing so, you should consult with each
14 other, express your own views, and listen to your fellow
15 jurors' opinions. Discuss your differences with an open mind.
16 Do not hesitate to reexamine your own view and change your
17 opinion if you come to believe it is wrong. But you should not
18 surrender your honest beliefs about the weight or effect of
19 evidence solely because of the opinions of your fellow jurors
20 or just so there can be a unanimous verdict.

21 The 12 of you should give fair and equal consideration
22 to all the evidence. You should deliberate with the goal of
23 reaching an agreement that is consistent with the individual
24 judgment of each juror.

25 You are the impartial judges of the facts. Your sole

1 interest is to determine whether the government has proved its
2 case beyond a reasonable doubt.

3 Please swear the court security officer.

4 THE CLERK: Can you raise your right hand, please.

5 (Court security officer duly sworn.)

6 COURT SECURITY OFFICER: I do.

7 THE COURT: All right. And, Ms. Dillon, please raise
8 your right hand.

9 I'm going to -- you are going to be allowed to be
10 present during jury deliberations solely for the purpose of
11 aiding communications between Ms. Krueger and the other jurors.

12 Ms. Dillon is not a juror and therefore cannot offer
13 opinions or recollections concerning testimony, evidence, or
14 trial proceedings, and no one should ask Ms. Dillon for
15 recollections or opinions concerning any aspect of the trial.

16 Do you promise to follow those directions?

17 MS. DILLON: I do.

18 THE COURT: All right. The -- Ms. Krueger's iPad
19 will not have any testimony on it from the trial. And
20 Ms. Dillon, as I've just said, is not to be a participant in
21 your deliberations. She's merely there to assist Ms. Krueger
22 in hearing and transcribing questions and conversations among
23 the jurors themselves. That is her sole purpose to be back in
24 the jury room.

25 Secondly, you will have a computer in the jury room to

1 allow you to hear -- and there will be directions, I believe,
2 but at least there will be a computer that should be -- someone
3 of the 12 should know how to work it, and, if not, send a note
4 out and we'll make sure you get directions. That'll have --
5 where you'll have the ability to play any tapes that were
6 played in court, English-speaking tapes, and any videos that
7 you'd want to -- that -- if you choose to listen to them or
8 watch them.

9 The transcription binders of the transcripts,
10 you're -- you should take those back to the jury room. You can
11 use those during your deliberations.

12 All other evidence that was introduced will be brought
13 back to you shortly, and you can use it and review it for your
14 deliberations.

15 You'll also get a copy of the indictment. That will
16 be given back to you.

17 Finally, you'll get a verdict form, which I'm going to
18 give to the court security officer. And he can take that and
19 hand it to one of the jurors so that it can be used during
20 deliberations.

21 Timing. You can leave at 4:30 if it's your choice.
22 You can -- you can stay until 5:00, but that's about the limit
23 of how late you can stay today if you haven't reached a
24 verdict.

25 If you haven't, you'll come in tomorrow, continue your

Alternate Jurors Excused

1 deliberations. I'd like you in by 9:00 unless that creates an
2 impossible problem. And if there is, let the court security
3 officer know, and we'll start a little bit later. But -- and
4 you're free to start earlier if you all collectively agree that
5 starting earlier is something you want to do.

6 If you are still deliberating, lunch will again be --
7 you'll again go down as a group to the second floor. Court
8 security officer will buy you lunch. And you can eat lunch in
9 the jury room, and you can continue to deliberate while you're
10 eating lunch.

11 All right. I believe that is all of the instructions
12 I wanted to give you. With that, I'm going to ask you to go
13 back to the jury room. And I'd ask Mr. Rodriguez and
14 Mr. Munier to remain in the courtroom.

15 COURT SECURITY OFFICER: All rise.

16 (Jury out at 2:46 p.m.)

17 THE COURT: Please be seated.

18 Mr. Rodriguez and Mr. Munier, you were the 13th and
19 14th jurors selected. A criminal jury involves 12 people. We
20 have alternates in case some jurors are -- have to be excused
21 because of illness or other types of problems.

22 So I'm going to discharge you at this time. You won't
23 be deliberating on this case. But I'm going to ask you not to
24 discuss the case with anyone and keep the same instructions
25 I've had with you before because if one of the 12 jurors cannot

Alternate Jurors Excused

1 deliberate and reach a verdict for some reason, illness or some
2 other event, you'll be receiving a call from my courtroom
3 deputy to come back in, and you will join the jury to begin
4 deliberations anew.

5 If you receive no such call, you're free to call my
6 courtroom deputy, and she'll tell you what the verdict was and
7 how it was reached.

8 But please don't discuss the case with anyone until
9 you learn that there has been a verdict or you're called back
10 to discuss the case fully with the jury that's already going to
11 be deliberating.

12 I want to thank you for your service. You paid close
13 attention to the case. It's frustrating, I'm sure, to sit
14 through all this evidence and not have the ability to
15 deliberate. But it is the way criminal cases are run because
16 we -- if we didn't have -- if we just went with 12 jurors and
17 one of them got sick, we'd have to start the case all over
18 again. And so I hope you understand the reason for the need
19 for alternate jurors.

20 You're free to go back to the jury room to gather your
21 belongings. I'm going to ask you to stop at my courtroom
22 deputy's office on your way out to give her contact information
23 so she can reach you. And, if need be, you can reach out to
24 her about a verdict if one is reached.

25 And, again, I want to thank you for your service.

Alternate Jurors Excused

1 And please don't discuss anything other than you've
2 been discharged as an alternate juror when you go back to the
3 others. Thank you.

4 And you can give your materials to -- give them to the
5 court security officer.

6 (Alternate jurors exit the courtroom.)

7 THE COURT: All right. Were the instructions to
8 the -- to Ms. Dillon adequate, or does anyone wish further
9 instructions in front of the jury?

10 MR. FRANZBLAU: The government's position, they were
11 adequate.

12 THE COURT: Defense?

13 MS. STEVENS: Defense position, they were adequate.

14 THE COURT: All right. Anything else then we need to
15 discuss?

16 I'm going to stay on the record until I have a --
17 something from the defense that they have reviewed all of the
18 exhibits going back to the jury room and --

19 MS. STEVENS: I have reviewed the exhibits that are in
20 the cart going back to the jury room. They are all the
21 exhibits that were put into evidence. I believe Mr. Schwartz
22 reviewed the computer to make sure it wasn't -- I don't know --
23 connected to the Internet or anything else.

24 THE COURT: All right. And how about the indictment?
25 Have you reviewed a copy -- redacted form of the indictment?

1 MR. SEIDEN: Yes.

2 THE COURT: All right. And is that in the cart?

3 MR. ROTHBLATT: It is, Judge.

4 MS. STEVENS: It is.

5 MR. FRANZBLAU: Yes.

6 THE COURT: All right. And there's no objection to
7 the redacted form, correct?

8 MS. STEVENS: Glenn?

9 MR. SEIDEN: No, your Honor.

10 THE COURT: Okay. All right. Anything else then we
11 need to discuss while we're on the record?

12 MR. FRANZBLAU: Nothing from the government.

13 THE COURT: Well, I will ask this. When a verdict
14 comes in, whether it's today, tomorrow, Friday, whatever it is,
15 I typically go back after the verdict has been -- I always poll
16 a jury. They'll be polled. You don't have to ask for it. I
17 will --

18 MR. SEIDEN: We don't have to ask? Okay.

19 THE COURT: I typically go back and thank the jurors
20 for their service. And then if the lawyers agree on the record
21 they won't be -- use anything they learn in discussions with
22 the jury to impeach the verdict, I allow lawyers to go back
23 after I'm done talking to them to speak to the jury.

24 MR. SEIDEN: Impeachment?

25 THE COURT: Yeah. Yeah. If you waive it on the

1 record, I'll let -- and you don't have to make that decision
2 now. We can wait till the verdict comes in. But lawyers often
3 find it helpful to talk to jurors after to see whatever the
4 jurors want to talk about.

5 They don't have to talk about deliberations. They can
6 talk about evidence. They can talk about style. They can talk
7 about whatever they want, or they can choose not to. But I
8 give the jurors the option, and many lawyers find it to be a
9 useful exercise to learn, you know, what jurors think about the
10 case and their performance.

11 Think about it. And if one party doesn't want to
12 agree to it, they don't have to go back. I'll let either party
13 that agrees go back if they want to. If neither side wants to
14 go back, then you won't.

15 But this one -- I allow attorneys that opportunity
16 because when I was a lawyer, I wish I could have talked to
17 jurors after a verdict. So I figured I get to do that now. So
18 give it some thought.

19 But I'm going to ask the parties at the time of the
20 verdict -- right after the verdict what their position is, and
21 you can think about that.

22 I don't allow parties to go back. I don't allow the
23 case agent. I don't allow the defendant. It's too personal.
24 So I let lawyers only go back.

25 Okay. Anything else we need to put on the record?

1 MR. FRANZBLAU: Nothing from the government.

2 MR. SEIDEN: Nothing, your Honor.

3 THE COURT: Okay. Off the record.

4 (Off-the-record discussion.)

5 (Concluded at 2:51 p.m.)

6 C E R T I F I C A T E

7 I certify that the foregoing is a correct transcript of the
8 record of proceedings in the above-entitled matter.

9

10 /s/ LAURA R. RENKE May 22, 2020
11 LAURA R. RENKE, CSR, RDR, CRR
12 Official Court Reporter

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